

(1993) 03 KAR CK 0006

In the Karnataka High Court

Case No : Misc. First Appeal No. 551 of 1993

Sadashivanagar Club, Bangalore

APPELLANT

Vs

Nataraj

RESPONDENT

Date of Decision : 26-03-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Constitution of India, 1950 — Article 143

Citation : AIR 1994 Kar 195 : (1993) ILR (Kar) 2313 : (1993) 2 KarLJ 507

Hon'ble Judges : N.D. V. Bhat, J

Bench : Single Bench

Advocate : B.V. Acharya for B.K. Sampath Kumar, for the Appellant; S.K.V. Chalapathy, for L. Shivashankar, for the Respondent

Judgement

1. This appeal has arisen out of an order dated 1-3-1993 passed by the XI Additional City Civil Judge, Bangalore on I.A. No. I in O.S. No. 448/1993.

2. When the matter came up for admission, the learned Counsel on either side submitted that the matter may be disposed of finally on merits. Accordingly, the matter is taken up for final disposal on merits of the appeal.

3. The facts relevant for the disposal of this appeal, briefly stated, are as under:

Defendant-appellant is a Society registered under the Karnataka Societies Registration Act, (hereinafter referred to as the Act). The plaintiff is said to be one of the members of the defendant's Society. During the General Body Meeting held on 22-8-1992 plaintiff was elected as the Honorary Secretary for a period of one year. It is stated that plaintiff has been working as the Honorary Secretary ever since then. When this was so, according to the plaintiff, some difference of opinion arose as between him and the President, with the result, the President of the Club was trying to wreak vengeance against him. It is stated that plaintiff was suspended as the member and the Secretary of the Club by the Executive Committee of the defendant-Society by its Resolution dated

15-1-1993. Plaintiff, therefore, was constrained to file the suit at O.S. No. 448/93 before the City Civil Court praying for a declaration that the resolution of the managing committee dated 15-1-1993 is illegal and for a permanent injunction restraining the Society from giving effect to the said resolution. In the course of the said suit, he also filed an application praying for temporary injunction restraining the defendant-society from giving effect to the resolution dated 15-1-1993 suspending him as the Honorary Secretary and permanent member. The main ground urged by him both in the plaint and the affidavit accompanying the application for temporary injunction in substance is that the Executive Committee has no right to suspend him either as a member of the club or the Secretary of the Club and that the resolution in question lacked bona fides.

3A. The defendant-appellant resisted the suit of the plaintiff as also the application for temporary injunction. The defendant denied the sins of commission attributed to it by the plaintiff. Defendant also asserted that the Executive Committee of the defendant society has got the right to suspend the plaintiff as a member and the Secretary of the Club. It also contended that the plaintiff is guilty of various sins of omission and commission and that the plaintiff was suspended pending report of the Disciplinary Committee. It also took up the usual contentions that plaintiff is not having prima facie case and the balance of convenience is not in his favour. On these grounds, in substance, defendant has prayed for the dismissal of the suit and the application, for temporary injunction.

4. The lower Court on a consideration of the materials on record and for the reasons reflected in its impugned order, allowed the application for temporary injunction. Hence, the instant appeal.

5. I have heard Sri B. V. Acharya, learned Senior Counsel for the appellant and Sri S.K.V. Chalapathi, learned Counsel for the respondent.

6. The point for consideration is as to whether the order passed by the lower Court is in order.

7. It is seen that plaintiff was a member of the Club in question though there appears to be denial in the written statement that he is a permanent member. There also does not appear to be any dispute that the plaintiff was elected as the Secretary by the General Body in 22-8-1992. It is further seen that the plaintiff was suspended both as a member and Secretary of the Club by a Resolution of the Executive Committee on 15-1-1993. The lower Court has taken the view that having regard to the wording of Rule 15 of the Rules of Sadashivanagar Club, the Executive Committee is not competent to suspend the plaintiff from his membership and as Secretary. The lower court has also taken the view that balance of convenience is in favour of the plaintiff. It is under these circumstances that the lower Court has chosen to grant the interim injunction prayed for. It will have to be seen as to whether the conclusion reached by the lower Court and the reasons for reaching the said conclusion are in order.

8. It is seen that the defendant club viz., the Sadhashivanagar Club is a Society

registered under the Karnataka Societies Registration Act. It is also seen that the Club has framed Rules for conducting its affairs. The Rules relevant for consideration in the context of the questions in controversy are Rule No. 7 and Rule No. 15. Rule No. 7 reads as under:

"7. Management

7.1. The Executive Committee. The Management of the club shall vest with a committee called "executive committee" which shall consist of the following persons:

- i) President
- ii) Vice-President
- iii) Hon. Secretary
- iv) Hon. Treasurer
- v) Six Committee Members
- vi) Immediate past President

The President, Vice-President, Hon. Secretary, and Hon. Treasurer shall together be called as the office bearers of the club.

7.2. Eligibility

Each of the members of the committee shall be elected by the members of the club at an annual general body meeting. The procedure of any member getting elected shall be strictly followed in the following manner:

(a) Any permanent, life or honorary member shall be eligible to file his nomination to any of the posts of the executive committee provided he/she has completed 5 years of continuous membership in the club and is not a defaulter as on the date of filing his/her nomination.

However, if any member desires to file the nomination for the posts of President or Vice President then he should have served as a member of the executive committee of the club at least for 2 years. If the nomination is for the post of Hon. Secretary, such member should have served as a member of the executive committee of the club at least for one year.

No member shall be eligible to file his/her nomination for more than one post at a time.

Each such nomination shall be proposed by a member and seconded by two other members each of whom have completed 5 years of membership of the club and who are not defaulters as at the time of scrutiny of nomination papers.

b) The office bearers shall on receipt nominations, scrutinise all the nominations and reject the invalid nominations after recording the reasons for such rejection,

in writing. They shall on the same day notify the valid nominations on the notice board of the Club.

c) The member whose name is proposed may withdraw from the elections by a letter given to the Hon. Secretary 7 clear days before the date of such General Body Meeting.

7.3. (a) In the event of the office of the President becoming vacant between two annual general body meetings, the Vice-President for the time being shall automatically become the President.

(b) In the event of the Office of the Vice-President/Hon. Secretary/Hon. Treasurer becoming vacant between the two annual general body meetings, the Executive Committee shall elect a member of the Executive Committee to the Vice-President and shall fill up the vacancy so caused by co-opting a member of at least 5 years standing of the club to the Executive Committee.

(c) Vacancies among the Executive Committee Members occurring between two annual General Body Meetings, shall be filled up by the Executive Committee by nomination from among the permanent members of the club of at least 5 years standing.

(d) No member who has served the Executive Committee in the capacity of either as one of the office bearers or as one of the six members of the executive committee for a consecutive period of three official years shall be eligible for election to any of the posts in the Executive Committee for the succeeding two terms. Subject to the above, no member shall hold the same office, viz., President, Vice-President, Hon. Secretary and Hon. Treasurer for more than two terms consecutively.

e) No members shall file nomination paper for a election to more than one office at a time or to an office and membership of the Executive Committee at the same time.

f) The Past President shall continue in the Executive Committee as ex-officio member on full term immediately after he retires as President of the Club.

7.4. Responsibilities

a) The Committee shall be responsible for managing the club affairs on a day basis with utmost diligence.

b) The committee shall meet at least once in a calendar month and shall review the affairs of the club and also shall discuss and take such decisions in the best interest of the club.

All decisions of the committee meeting shall be minuted in writing and shall be signed by the President. The recorded minutes shall be an important document of the club and shall be kept in the safe custody within the club premises by the Hon. Secretary.

All decisions of the committee shall be by majority. In the event of there being equal division among the members of the committee, then the Chairman of the meeting (normally being the President of the Club) shall have the extra vote and the matter shall be decided accordingly.

c) The quorum for each committee meeting shall be 5 members of the committee.

d) Each member of the committee shall attend the meetings of the committee regularly. Any member of the committee absenting himself/herself from attending, without leave of absence, for three consecutive meetings of the committee, then he/she shall automatically cease to be a member of the committee and the vacancy shall be filled in line with the rules of the club by the committee.

e) The executive committee shall form the following sub-committees. Each of the subcommittee so formed shall function under the Chairmanship or governorship of such members of the committee as are nominated by the executive committee. The sub-committee so formed shall function as an advisory body to the executive committee. It shall be the prerogative of the President to allocate to the sub-committee any of the members of the committee.

Sub-committees.

The committee shall have sub-committees for the following departments:

- 1) Finance
- 2) Bar
- 3) Canteen and House Keeping
- 4) Library and Cards
- 5) Tennis
- 6) Badminton, squash and billiards
- 7) Cultural

The executive committee may form more sub-committees apart from or in addition to the above mentioned departments for the proper functioning and handling of the day to day affairs of the club.

Each of the sub-committees so formed shall function within the framework of such limits as may be prescribed and laid down by the executive committee from time to time.

The President and the Hon. Secretary shall be ex-officio members of all the sub-committees.

f) The office bearers shall meet once in a fortnight and shall review the state of

affairs of the club regularly."

Rule 15 reads as follows: "Disciplinary Proceedings

The committee may from time to time decide upon the procedure to be followed in any disciplinary proceedings to be conducted against any member/s at the instance of the committee for such member/s behaving in an undisciplined manner in any matter connected with the club. The Committee shall have the power of imposing such penalty as it may deem fit from case to case including keeping a member under suspension for a period not exceeding 3 months. In the event of the committee feeling the necessity of imposing a penalty or suspension for a period exceeding 3 months or removing the member from the membership of the club, then the same shall be approved and passed by the General Body.

The Hon. Secretary shall be vested with the powers to suspend any member forthwith in cases of indiscipline of grave nature and report at the earliest to the executive committee.

9. A careful perusal of Rule 7 would clearly go to show that the management of the club vests in the Executive Committee. The responsibilities of the committee are adumbrated in the said Rule and it is not necessary for this Court to dilate on those aspects in so far as the disposal of the question in controversy is concerned. All that is necessary to notice with reference to the said Rule is that the management of the Club vests in the Executive Committee.

10. Further Rule 15 would go to show that it is the Executive Committee which is entrusted with the power to take disciplinary action in the way and manner as reflected therein.

11. Sri B. V. Acharya, the learned Senior Counsel for the appellant submitted that having regard to the scheme of the "rules" and the intendment reflected in the various provisions, it can be gathered that the Executive Committee has got the power to impose: suspension both by way of penalty as also by way of an administrative action in contemplation of disciplinary proceedings. The learned Counsel argued that it is not as if the, Executive Committee has no power to suspend a person from his membership. The learned Senior Counsel, Sri Acharya" also submitted that even assuming for the time being that the plaintiff has got a prima facie case, in that behalf it cannot be said that the balance of convenience is in his favour having regard to the various allegations pending enquiry against the plaintiff-respondent. The learned counsel invited the attention of this Court to the decision in Sri Gowrishankara Swamigalu Vs. Sri Siddhaganga Mutt, Reliance is also placed on the decision in Krishna Moorthy Bangalore Turf Club 1975 2 KarLJ 428 Summing up his submission on these lines, the learned Counsel Sri Acharya contended that the appeal deserves to be allowed and the order passed by the Court below is liable to be set at naught.

12. On the other hand, Sri Chalapathi, learned Counsel for the respondent submitted that the Executive Committee cannot assume power either to suspend

a member much less as a Secretary by way of an administrative measure having regard to the fact that such a power is not conferred upon the executive committee at all. The learned Counsel also pointed out that the second part of Rule 15 of the Rules does not warrant a conclusion that the executive committee has got the power of suspension. It is pointed out by the learned Counsel that it is the exclusive power conferred upon the Secretary of the Club and the same cannot be exercised by the Executive Committee. The learned Counsel also contended that when one deals with the rules of the Society, registered under the Societies Registration Act like a Club, those Rules will have to be strictly construed and if there is a violation of the Rules in passing any order or resolution the same would be void in law. The learned Counsel in this connection invited the attention of this court to the decision in *T.P. Daver Vs. Lodge Victoria* No. 363, S.C. Belgaum, The learned Counsel also contended that the plaintiff respondent is an elected Secretary in that he was elected by the General Body and it was not competent for the Executive Committee to suspend him from the office of Secretary. The learned Counsel also argued that Courts of law should be slow to restrain an elected Secretary from functioning. In this connection, the learned Counsel placed reliance on the decision in *The Delhi Cloth and General Mills Co. Ltd. and Another Vs. Dharam Singh*, and the decision in *Syed Mohd. Mohsin Rizvi and Others Vs. State of U.P. and Others*, Reliance is also placed by the learned Counsel on the decision in *In Re Art. 143 Constitution of India and Delhi Laws Act (1912) etc.* AIR 1951 SC 332 and the decision in *Ezra v. Mahendra Nath Banerji* ILR (1946) Cal 88. In sum, the learned Counsel contended that the order passed by the Court below deserves to be confirmed.

13. I have given my anxious considerations to the submissions made on either side.

14. As pointed out earlier, the Management of the Club vests exclusively with the executive committee. Further, the disciplinary control also appears to be vested in the executive committee. It is relevant to point out here that in Rule 15 the word used is only "committee". However, it is necessary to bear in mind that the word "committee" is a matter of definition and according to the definition "committee" means the Executive Committee elected in accordance with Rule 7. It can also be seen that the first part of Rule 15 speaks of suspension by way of penalty. However, the second part of Rule 15 does not speak of suspension by way of penalty but it only says that suspension can be effected forthwith in the case of indiscipline of a grave nature. It is therefore clear that Rule 15 contemplates two types of suspension. There is a vital difference between suspension during enquiry and a punitive suspension. When suspension is ordered on the administrative ground in contemplation of a disciplinary enquiry and pending disciplinary enquiry it is obvious that such a suspension is not punitive. However, if according to the Rules suspension is prescribed as a penalty suspension by way of penalty would amount to punishment. It is also equally clear that before a punitive suspension is inflicted the person concerned should necessarily have an opportunity of being heard as otherwise the same would

violate the principles of natural justice,

15. In the instant case, it is seen that the respondent who was the member and the Secretary of the Club appears to have been suspended not by way of punishment or by way of punitive measure, but he appears to have been suspended in contemplation of disciplinary proceeding. This conclusion appears to be inevitable in the context of the circumstances leading to the suspension of the instant respondent. At this juncture, the letter dated 16-1-1993 issued by the" Honorary Secretary (since appointed) to the instant respondent can be seen. In order to have a clear idea leading to the suspension of the instant respondent, it would be convenient to cull out the contents of the said letter. It reads as under:

"The Executive Committee in its meeting held on 15-1-1993 prima facie found and opined unanimously against you On the undermentioned charges and constituted a Disciplinary Committee to enquire and investigate into the said charges viz.

1. Gross misappropriation of the funds of the club to meet and enrich your personal gains.
2. Behaving in an undisciplined manner in all the matters connected with the Club which is unbecoming of the post of the Hon. Secretary of the Club.
3. Tampering and Doctoring with the records of the club with the sole and active intention of maligning the decisions of the executive committee.
4. Illegally taking away the minutes book outside the premises of the club from the safe custody.
5. Violating the provisions of Rule 7(4) with utter contempt.

In view of the above, pending the report of the Disciplinary Committee, the Executive Committee invoking the provisions of Rule 7(4) r/w Rule 15 decided unanimously to suspend you both from the post of Hon. Secretary and the permanent membership with immediate effect, hence this is to inform you that, you are suspended forthwith both from the post of Hon. Secretary and the permanent membership. As natural consequence, he credit facility and all other facilities available to you are withdrawn forthwith. You are also debarred from entering the club premises as a suspended member and even as a guest of any member. However you will be given ample opportunity to defend yourself on the above charges before the Disciplinary Committee. Further you may also note that the executive committee has nominated in Prabhudeva J. Chigateri as the Hon. Secretary of the club and he has taken charge and assumed the office of Hon. Secretary today.

Should you indulge and continue your illegal activities despite the suspension, the same shall be reported to the Police for necessary criminal action against you."

A careful perusal of the said letter would go to show that certain charges are levelled against the Secretary. The same would also go to show that a report is being called from a disciplinary committee. In other words, the totality of the letter would not leave any doubt on the question as to why and what for the instant respondent is suspended. It is also obvious that the instant respondent has not been suspended by way of punitive measure, but he has been suspended in contemplation of a disciplinary proceeding. In such a situation the first part of Rule 15 would not operate. It is also equally clear that recourse is had to the latter part of Rule 15. The question in controversy with reference to this aspect is as to whether the recourse to the latter part of Rule 15 can be had by the Executive Committee.

16. Sri Chalapathi, learned Counsel for the respondent, as pointed out earlier, contended that Rule 15 in this behalf wilt have to be construed strictly and it would not be permissible to have recourse to any implied power. The decision which he has mainly pressed into service in this connection is the decision of the Supreme Court in *T.P. Daver Vs. Lodge Victoria No. 363*, S.C. Belgaum, In the said case, the Hon''ble Supreme Court has, among other things, observed that the source of power of associations like clubs and lodges to expel their members is the contract on the basis of which they become members. It is further pointed out that this contractual origin of Rule of expulsion has its corollary in the cognate rule that in expelling a member the conditions laid down in the rules must be strictly complied with. The learned Counsel has also placed reliance on the decision in *In Re Art. 143, Constitution of India AIR 1951 SC 332* In particular, the learned counsel has drawn the attention of this Court to page 389 wherein among other things, it is stated:

"If a statute enumerates the things upon which it is to operate everything else must necessarily and by implication be excluded from its operation and effect."

The learned Counsel has also placed reliance, as pointed out earlier, on the decision in *Ezra v. Mahendra Nath Banerji* 3 ILR (1946) Cal 88 to contend that there is no implied power to expel a member from unincorporated club and the power is limited to the rule which confers powers on the different functionaries. The submissions made by Sri Chalapathi with reference to the various decisions referred to hereinabove are unexceptional. However, what is required to be-seen in the instant case is as to whether the Executive Committee can be said to have the power to suspend a person from his membership in contemplation of a disciplinary proceeding.

17. It is necessary to remember here that suspension is an incident of the disciplinary proceeding. It is well settled that an appointing authority can suspend in contemplation of a disciplinary proceeding. Often time apart from the appointing authorities, certain other authorities are also empowered to suspend a person against whom disciplinary proceeding is contemplated. Punishing authority is also empowered to suspend a person. In the instant case, it can be seen that the Disciplinary control with respect to members is vested in the

Executive Committee. That is clear from Rule 15 itself. Further, it is seen that the Executive Committee has also got the power to impose the penalty of suspension up to a period of three months. In the event of the committee finding the necessity of imposing penalty of suspension for a period exceeding 3 months or removing the member from the membership of the club then of course the same will have to be approved and passed by the General Body. However, one thing is very clear that it is the Executive Committee which is empowered to initiate disciplinary proceeding. The question as to what punishment should be given ultimately will depend upon the nature of the case and depending upon the punishment required the question as to whether the approval for the General Body will have to be had or not will have to be decided. The latter part of Rule 15 will have to be interpreted also bearing in mind what is stated immediately, here in above. It would be indeed refreshing to cull out the latter part of Rule 15 again at this juncture. It reads as under:

"The Hon. Secretary shall be vested with the powers to suspend any member forthwith in cases of indiscipline of grave nature and report at the earliest to the executive committee."

This provision cannot be read in isolation or in a watertight compartment. The same will have to be read in conjunction with Rule 7 which has already been culled out earlier. If one reads the latter part of Rule 15 culled but hereinabove between the lines one will not fail to discern the fact that power to suspend is not vested in Secretary exclusively but is vested in him for and on behalf of Executive Committee. That is the only conclusion that can be drawn in the context of the totality of the language reflected in the latter part of Rule 15. If such were not the intention or rationale behind the said rule, then the obligation on the part of the Secretary to intimate the action taken by him to the Executive Committee at the earliest would be rendered meaningless. It is needless to say that while interpreting a provision of a statute or a rule, the same will have to be interpreted in such a way as to give meaning to each and every part of the provisions and it should be the endeavour of the court to construe it in such a way to give meaning to the different parts of the provision-without of course straining the language employed there. Further it is also necessary that this particular Rule as pointed out earlier, will have to be understood in the context of Rule 7 which has vested the power of management on the executive committee and the first part of Rule No. 15 which has conferred disciplinary control on the executive committee. If these two Rules are read together, the conclusion drawn hereinabove becomes inescapable. In that view of the matter, I am indeed of the view that the executive committee has got the power to suspend any member forthwith in the case of indiscipline of a grave nature. Sri Chalapathi is right in contending that the source of power in such a situation is the rule framed by the Society. However, as pointed out by me earlier, Rules framed by the Society viz., the latter part of Rule 15 if read as a whole and if interpreted properly will lead to an irresistible conclusion that the Executive Committee has got the power to effect the suspension in the context of a situation referred to in latter part of

Rule 15. Under these circumstances, I have no hesitation whatsoever to take a prima facie view that the executive committee of the Club in question has got the power to suspend any member in contemplation of a disciplinary proceeding. The said power is not an implied power but a power which flows from a reasonable interpretation of the second part of Rule No. 15 read with Rule No. 7 and the first part of Rule No. 15. In that view of the matter, the ratio laid down by the Supreme Court and the Calcutta High Court in the decisions pressed into service by Sri Chalapathi., the learned Counsel for the respondent is not of any assistance to the respondent.

18. In the instant case, it is seen that the disciplinary proceeding appears to have been initiated in view of the various sins of commission attributed to the instant respondent who is a member and Secretary of the Club. The written statement filed by the defendant-Society goes to show that there are allegations of misappropriation and fabrication of documents against the Secretary. Para S of the written statement reads as under:

"It is clear from the minutes that the plaintiff had made changes in the official list as approved by the Managing Committee towards increments to the employees of the Club. It arose at the option that figures had been tampered with, by the plaintiff and it amounted to forgery. A discussion was also held regarding the irregularities committed by the plaintiff as set out in Item (2) of the Agenda as "A" to "D":--

(a) It was clearly and unanimously agreed in the first EC meeting held on 23rd August, 1992 that no member of the Committee shall do any business or professional transaction with the Club either directly or indirectly. Hitherto, Mr. S. Nataraj was doing printing work through his firm M/s. Chetana Printers which was stopped with effect from August 1992. However, another concern named Fine Art Printing, a concern belonging to Sri S. Nataraj was granted printing work were entrusted by Mr. Nataraj himself. Once this was noticed, quotations from other parties were obtained and printing works were entrusted to some outside agency. At this juncture, Mr. Nataraj got enraged and shouted at the manager of the club and used unparliamentary words against the President and the Honorary Treasurer and continued to give orders to his own concern for printing. Against this background, the President wrote him a letter on 12-12-1992 sent under certificate of posting asking him to explain his conduct to the committee. Fearing that this matter will be taken up in the E.C. meeting, Mr. S. Nataraj did not convene the E.C.-Meeting and prompted the President to. convene the E.C. Meeting. Members discussed the matter "and felt that it is highly irregular and there should be different members to issue orders and execute works. Excess charging towards printing bills will amount to nothing less than cheating and it is unfortunate that Mr. Nataraj holding the post of Secretary indulged in such activity.

b) The President informed the committee. that Sri S. Nataraj has obtained a sum of Rs. 1832-50 from the Club towards purchase of coir mat and purchased from

Coir Board on 2-1-1993 vide their bill No. 14871. As there were certain erasures and alterations in the bill the treasurer verified the genuineness of the bill and a personal contact was made with the Coir Board at their office at Seshadripuram and it was revealed that the actual payment made was only Rs. 1495-92. Mr, S. Nataraj managed to obtain the bill for the gross amount of Rs. 1832-50/- without deducting the discount which was granted at 20% and the two counterfoils lying with the custody of Coir Board clearly showed the discount at 20% being allowed and 2% sales tax being charged and the net payable amount arriving at Rs. 1495-32 brought to the notice of the E.G. that Sri S. Nataraj has defrauded the Club to the extent of Rs. 337-18. The members felt that if any person who can afford to cheat the club like this holding the highest position in the Club, can do any fraud of greater magnitude and such things should be stopped at any cost. The members unanimously requested that action be taken against Mr, S. Nataraj against such frauds and police complaint be given for criminal conspiracy.

(c) It was brought to the notice of the committee. there was already an enquiry against Mr. Nataraj about two months earlier for misbehaviour and he was held and as it was a first such incident during the tenure of this committee, the matter was dropped. Further the President stated that on earlier three occasions disciplinary action was taken against Mr. Nataraj for his misbehaviour and he was suspended from the membership. In fact, his suspension was revoked only after his giving undertaking in writing that there shall be no misbehaviour henceforth.

" (d) It was brought to the notice of the B.C. by several members that Sri Nataraj consumes alcohol heavily and abuses any member including committee members and the President using foul language. Several such instances were brought to the notice of the committee and the members felt that the image of the Club was being eroded by such behaviour on the part of Sri S. Nataraj.

In the circumstances, the Managing Committee of the Club unanimously felt that it was left with no other choice, but to suspend the plaintiff from the permanent membership of the club with immediate effect and also to suspend" him from the post of Honorary Secretary. A committee was also constituted to go into the charges of indiscipline, forgery and misappropriation and accordingly, a justice came to be issued to the plaintiff setting out the charges in detail and suspending him from the permanent membership pending enquiry."

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 fact, the observation. of the Calcutta High Court in EZRA'S case ILR (1946) Cal 88 (referred to earlier) at para-3 therein will support the said view. In this view of the matter, it is not possible to say that the plaintiff has got a prima facie case. In the instant case, the lower Court has not considered these aspects in a proper perspective with the result, the conclusion reached by the lower Court is rendered erroneous.

20. Even assuming that the plaintiff has got a prima facie case, it is difficult to say that the balance of convenience is in favour of the plaintiff. Sri Chalapathi, learned counsel for the respondent submitted that if plaintiff ultimately succeeds in the suit and if in the meanwhile the order of suspension is continued against him, he would not be in a position to make good that which he will have lost in the meantime. I am unable to agree with the submission made by Sri Chalapathi, learned counsel for the respondent. In a case like the one in hand, the approach to be adopted is altogether different. It is seen that the allegations of misappropriation and fabrication of document with adequate particulars are made against the respondent. It is further seen that the details of the said allegations are reflected in the written statement, the relevant portion of which is already culled out earlier. In that context, in my opinion, it would not be proper to hold that the balance of convenience would be to allow the Secretary to continue as a member and Secretary. In my opinion, the balance of convenience is in favour of the defendant-Society.

21. The lower Court in the course of its order has not considered the question relating to the prima facie case in its various facets. Further the conclusion reached by the lower Court "with reference to the balance of convenience also is not proper. In my opinion, the order passed by the Court below is unreasonable warranting interference at the hands of this Court.

22. From what is stated hereinabove, it is clear that the executive committee has got the power to suspend the plaintiff-respondent from the membership of the club. Once when it has got the power to suspend him from the membership of the Club it is clear that he cannot also act as the Secretary of the Club since the latter is inextricably connected with his membership. Further the balance of convenience also is not in his favour. Under these circumstances, it would follow that the plaintiff would not be entitled to temporary injunction prayed for against the defendant-Society.

23. For the reasons stated hereinabove, the appeal is allowed. The order dated 1-3-1993 passed by the XI Additional City Civil Judge Bangalore is hereby set aside and the application filed by the plaintiff at I. A. No. 1 under Order 39 Rules 1 and 2 read with Section 151, CPC is dismissed.

24. Appeal allowed.