

(2008) 09 DEL CK 0067
In the Delhi High Court
Case No : CS (OS) 1863 of 2008

Sunil Dang

APPELLANT

Vs

Indian Newspaper Society

RESPONDENT

Date of Decision : 09-09-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 7
Companies Act, 1956 — Section 25

Citation : (2009) 149 CompCas 563 : (2008) 88 SCL 121

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sandeep Sethi and Ujjwal Jha, for the Appellant; Neeraj K. Kaul and Akhil Sibbal, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—Owing to the urgent nature of the relief claimed, short notice was issued to the defendant.

2. The defendant is a company within the meaning of Section 25 of Companies Act. The plaintiff claims to hold two membership of the defendant company. The plaintiff has instituted this suit for permanent and mandatory injunction, inter alia, on the ground that the defendant has treated both the membership of the plaintiff to have ceased on the ground of the plaintiff having not paid his subscription; that the elections of the defendant have been announced to be held on 19-9-2008 and nomination of the election has to be filed at least seven days prior to the election; that the plaintiff in accordance with the Articles of Association of the defendant had tendered the subscription fee along with an additional Rs. 500 required to be paid, but the defendant has not restored the membership of the plaintiff and has on the contrary referred the matter to Sub-Committee, intentionally with a view to debar the plaintiff, who has in the past been contesting the elections to the committee of the defendant, from doing so. The plaintiff has in the suit claimed the relief of restraining the defendant from

ceasing the plaintiff's membership besides claiming damages of Rs. 21,00,000. Alongwith plaint, the application for interim relief has been filed claiming the relief of restoring the plaintiff's membership of the defendant society and during the pendency of the suit.

3. Article 8 of the Articles of Association of defendant is as under:

A member shall cease to be a member of the Society in any of the following events:

- (a) Upon the closing down of the newspaper which he represents in the Society.
- (b) In case the member is a firm, upon the dissolution of such firm.
- (c) Upon receipt by the Society of notice in writing to be sent under registered post of this intention to resign membership signed by a member.
- (d) Upon a member failing in the first instance to pay his annual subscription for any year on due date, that is, by March 31, of the preceding year and to do so upon June 30, following in spite of three reminders having in the meantime been sent to him by the Society, the last of which should be under registered post, such cessation taking automatic effect from July 1 of the year for which the subscription has fallen due.
- (e) Upon a member failing to pay within thirty days after written demand has been made, any contribution other than the admission fee and annual subscription, for the expenses of the Society leviable as decided by the committee.
- (f) Upon a member failing to observe any rule, bye-law, regulation, ruling, resolution or decision of the Society which is passed as binding upon all members and a dissolution having been passed by a majority by a three-fourth of the members of the Society at a general meeting that such member shall cease to be a member. The Executive Committee, however, shall have the power to suspend a member pending final decision by the general body:

Provided that before a dissolution is passed as laid down either under Clause 8(e) or (f) ante, an opportunity shall be given to the member concerned to appear and explained his position with regard to the point in issue at a general meeting/Executive Committee meeting, as the case may be, at which the resolution is to be moved, but that in the event of his not availing of this opportunity or general body not accepting his explanation, there shall be no question with regard to the validity and effectiveness of a resolution passed in the manner laid down.

4. The Senior Counsel for the defendant has urged that the plaintiff has indulged in falsehood and is thus not entitled to the discretionary relief. Reliance in this regard is placed on S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, and Satish Khosla Vs. M/s Eli Lilly Ranbaxy Ltd. and another, . It is averred that the plaintiff has in para 7 of the plaint falsely stated

that he had sent the subscription for the year 2008-09 under cover of letter dated 4-6-2008. The original letter dated 4-6-2008 of the plaintiff to the defendant has been produced alongwith envelope to demonstrate that the same bore the postal stamps of 16-7-2008 only and has been received by the defendant on 16-7-2008 itself, i.e., after the date when the plaintiff in accordance with the Articles of Association ceased to be a member.

5. It is next contended on behalf of the defendant that as per the documents filed by the plaintiff himself, the Executive Committee of the defendant had as far back as in October, 2007 taken a decision to constitute a Sub-Committee to consider all cases of applications for restoration of ceased membership. It was pointed out that such a Sub-Committee has in fact been constituted in December, 2007, since it was found that a large number of members were not paying their subscriptions on time and were coming at the last minute before the election for payment of their subscription. The defendant has also handed over a list of documents alongwith photocopy of documents showing compliance of the procedure prescribed in Article 8, i.e., of issuance of three reminders and reminder by Registered Post AD to the plaintiff. The said list of documents also contains at page 10 a decision of the Executive Committee on 10-7-2008 to refer the cases of applications for restoration of ceased membership to the Sub-Committee constituted earlier, as aforesaid.

6. It is contended that as per the Articles, the membership terminated automatically on 1st July of the year for which the subscription had not been paid.

7. Lastly, it is contended that the plaintiff has in the plaint sought the relief of restraining the defendant from ceasing the plaintiff's membership; the said relief has become infructuous in as much as the membership had ceased on 18-7-2008, prior to the institution of the suit. It is also contended that the interim relief claimed is beyond or inconsistent with the relief which has been claimed in the plaint and the plaintiff is not entitled to any interim relief on this ground as well.

8. Reliance has also been placed on Naresh Chandra Sanyal Vs. Calcutta Stock Exchange Association Ltd., , to contend that the Articles of association of a company constitute a contract between the members and the relief in contravention of the same cannot be granted.

9. The Senior Counsel for the plaintiff has not disputed the letter dated 4-6-2008 produced by the defendant. He has further contended that Article 10 vests the discretion in the member, whose membership has ceased, to apply for restoration and does not vest any such discretion in the defendant to refuse such restoration of membership. In response to the argument of the Senior Counsel for the plaintiff of the suit being infructuous, reliance is placed on Nabha Investment Pvt. Ltd. Vs. Harmishan Dass Lukhmi Dass, to contend that under Order 7 Rule 7 CPC, relief not specifically asked for can be granted.

10. As far as the argument of Senior Counsel for the defendant with respect to

the plaintiff having practiced falsehood is concerned, a perusal of the letter dated 4-6-2008 alongwith its envelope handed over in the court and which is now taken on record shows the envelope to be in fact bearing a postal stamp of 4-6-2008 also, though, it undoubtedly also bears a postal stamp of 16-7-2008. A postal article ordinarily bears the stamp of both, dispatching and the receiving post office. Normally, an Article sent by post under certificate of posting within the city would not take such a long time but the fact remains is that the envelope does bear the stamp of 4-6-2008, on which the plaintiff claims to have dispatched the said envelope. I would have been reluctant to believe the UPC produced by the plaintiff in proof of having dispatched the subscription on 4-6-2008 and would have believed the letter to have been dispatched one or two days before 16-7-2008 only. However, the envelope produced by the defendant also bears the stamp of 4-6-2008. Thus at this stage, nothing definite can be said as to whether any sharp practices have been indulged by the plaintiff or not. There is also some dispute as to the address of the plaintiff and thus it cannot be said at this stage whether the plaintiff has lied about not receiving the reminders.

11. I am more persuaded to take this view because the plaintiff has made out a two fold case in the plaint. The plaintiff has firstly contended that he had paid the subscription within time and, therefore, there was no occasion for the defendant to treat the membership of the plaintiff to have come to an end automatically and secondly, it is contended that even if it is so, the plaintiff has in accordance with the Articles shown his willingness to pay subscription alongwith Rs. 500 and cannot be denied the relief of restoration of membership. As far as the second basis of the suit is concerned, in my opinion, it was not essential for the plaintiff to have created a case of having sent the subscription before 30-6-2008, i.e., on 4-6-2008. Thus the falsehood imputed to the plaintiff is found to be not essential for the plaintiff to succeed.

12. That takes me to the interpretation of the Articles of Association of the defendant. The Senior Counsel for the defendant has fairly admitted that unlike Articles/rules of the several bodies which provide for the subscription/membership charges to be paid/deposited by a cut-off date to enable participation in the elections, there is no such rule/article of the defendant. Article 8 provides for the subscription of the ensuing year to be paid by 31st March and upon failure to do so upto 30th June in spite of three reminders, last of which should be by registered post, the membership is to cease automatically with effect from 1st July. Article 8(e) provides for the payment of the expenses of the society leviable as decided by the committee, besides the payment of subscription and admission fee. Article 10 is as under:

A member losing his membership for the non-payment of his due subscription to the Society as contemplated in Article 8(d) hereof may have his membership restored on payment of such subscription with an additional readmission fee of Rs. 500 but a member losing such membership for the non-payment of any other contribution as contemplated in Article 8(e) hereof may have his membership

restored on the payment of such contribution only.

13. In my view, the contention of the Senior Counsel for the plaintiff is correct that the use of the expression "may" in the aforesaid Article does not intend to vest any discretion to the defendant to readmit or not to readmit a member whose membership has ceased under Article 8(d) or 8(e). The only requirement is of payment of the subscription and of readmission fee and if Article 8(e) is applicable, also such other expenses which the Executive Committee may levy. There is no power vested in the defendant under its Articles to refuse or deny readmission upon the member tendering the subscription, readmission fee and other incidental expenses, if any. Under Article 10 it is a right of member to "have his membership restored" on complying with the conditions thereof.

14. As aforesaid, it is admitted position that in the past, such issues of readmission were not referred to any Sub-Committee. Even if, the same are to be referred to any Sub-Committee, I do not find any justification for the said Sub-Committee to not take a decision on the readmission immediately and/or well before last date to file nomination for the election to the committee of the defendant. Such conduct on the part of the defendant which ought to, in these matters, take a fair and unpartisan stand, without favouring any member or group, definitely deprives the plaintiff from participating in the ensuing election to the committee of the defendant.

15. The plaint and the application are definitely not drafted in the best possible manner in which they ought to have been. However, the plaintiff ought not to be deprived of any relief to which he would otherwise be entitled to but for the error, if any of the agent employed by him. Suits for injunction are always drafted in a hurry in a race against time, whereafter the suit would be infructuous. Lawyers also cannot be totally blamed for not drafting astutely. I also do not find the plaint to be infructuous. The relief claimed is of restraining the defendant from ceasing the plaintiff's membership. The case of the plaintiff is that upon offering the subscription and readmission fee and other charges, he is in any case, entitled to be treated as a member and/or be readmitted as a member and the defendant should not be permitted to prevent him from exercising his rights as a member of the defendant.

16. I, thus find that the plaintiff has a prima facie case of participating in the ensuing elections of the committee of defendant. Election is an important event or facet of membership and the plaintiff would suffer irreparable injury, if in spite of having a prima facie case is not permitted to participate in the elections. In these circumstances, I also find the balance of convenience in favour of the plaintiff.

17. The application is, therefore, allowed.

18. The plaintiff has already tendered the subscription and application readmission fee for both membership. The defendant is free to encash the cheques deposited by the plaintiff for the said purpose. The plaintiff shall before

participating in election also pay Rs. 500 in addition towards restoration expenses (postal charges, etc.), if any, of both membership. Needless to add that since the plaintiff upon tendering the amount is found to be a member, the plaintiff shall be entitled to participate in the ensuing elections of the defendant subject to the rules thereof.

19. Order be given dasti to the counsels for the parties.