

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) NO.385/2011**

Date of Decision : 14.10.2011

B.M.AGGARWAL

.....Plaintiff

Through: Mr. Ravi Gupta, Sr.Adv.
with Mr.L.Kumar, Advocate.

Versus

PUNJABI BAGH CLUB & ANR.

..... Defendants

Through: Mr.P.D.Gupta, Adv. for
defendant no.1.
Mr.Deepak Vohra, Adv. for
defendant no.2.

CORAM :

HON'BLE MR. JUSTICE V.K. SHALI

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

V.K. SHALI, J.

IA No. 2575/2011

1. This order shall dispose of IA No. 2575/2011 filed by the plaintiff under Order XXXIX Rule 1 & 2 read with Section 151, CPC seeking an ad interim relief for appointing an observer for conduct of elections proposed to be held on 06.03.2011 (now slated to be held on 27.03.2011) and to pass an ad interim injunction for appointing a receiver, thereby entrusting him with the power to hold the Annual General Meeting of the defendant no. 1/Club and thereafter conduct the elections of the Managing Committee of defendant no. 1

and thereto pass an ad interim injunction restraining the defendants from collecting the dues and prepare the so-called final electoral roll.

2. Briefly stated, the facts of the case are that the plaintiff has filed this second round of litigation against the defendant club seeking the relief of declaration and mandatory injunction. Earlier to this, the plaintiff had filed a suit claiming somewhat similar relief against the defendant club which was disposed of vide order dated 07.12.2010. The said order in CS(OS) No. 2418/2010 reads as under :-

“(1) After brief submissions, the learned counsel for the defendant no.1 on instructions has very fairly conceded that the defendant no.1/club will reschedule the elections and accordingly, request the Election Officer/defendant no.5 to do the needful by issuing fresh notification for fixing up the revised time schedule for holding the elections.

(2) It is further stated that this would be subject to the following conditions:

(a) In the first instance, a notice will be issued to all the defaulting members within a week from the date of receipt of this order requiring them to clear their arrears within the period stipulated in the club rules.

(b) Notices will be sent to all the defaulting members on the last known addresses available on the record of the club, by speed post and it will constitute a sufficient service on them. In addition to this, the club shall publish a general advertisement/notice in two English dailies apart from display on notice board intimating the members of the club that those members who are in arrears can clear the same by the specified date, failing which their names will be struck off from the rolls of the club.

(c) Notices shall be issued under the signatures of the General Secretary of the club. The General Secretary is present in Court and he assures the Court of the requisite cross objector-operation from his side. In case the requisite cross objector-operation is not forthcoming, the Managing Committee may authorize any other office bearer to sign the notices.

(d) Once the stipulated time period for clearance of the arrears is over, the matter will be placed before the Managing Committee which will take appropriate decision in terms of the Club Rules to decide the question as to whether the name of particular members who are in arrears are to be struck off from the rolls of the club or not.

(e) Once this exercise is completed, the list prepared thereafter will constitute the electoral college who will cast their votes for election. This list will be made available to all the persons concerned in terms of the rules, regulations and the byelaws of the club.

- (3) The learned senior counsel for the plaintiff as well as learned counsel for the defendant no.1 who is the main contesting defendant, have stated that in view of the above directions, the suit as well as all pending applications may be treated as disposed of.*

Ordered Accordingly.

- (4) Dasti.”*

(Sd/-)

07 DECEMBER, 2010”

3. The grievance of the learned senior counsel Mr. Ravi Gupta is that after the passing of the said order, this Court had set down a schedule for the purpose of giving time to the defaulting members to clear their arrears and hold elections. As against this, the managing committee of the defendant

club has not only violated the orders passed by this Court on 07.12.2010 but has also tried to tinker with the said order so as to sub-serve the interest of one particular group and thereby has flouted the orders.

4. It is contended that in terms of the said order, the defendant club was required to send individual notices to the defaulting members and to give them one opportunity to clear their arrears within a period of 30 days as well as simultaneously by publishing a general notice in the National Daily both in Hindi and English, which period had expired on 15.01.2011. It was after the expiry of the aforesaid period of 30 days that the matter was to be placed before the managing committee which was required to take a decision with regard to the expulsion or non-expulsion of the members who had defaulted in payment of arrears of their dues.
5. It is contended that instead of expelling the defaulting members, the managing committee enlarged the time to pay the arrears and also took a decision that certain category of members need not pay the arrears and yet their names would be included in the electoral rolls. It is further contended that as a consequence of these decisions taken by the managing committee, the electoral list which will be prepared will not be a correct list of electors and consequently, the true representative body of the club would not get elected. It is

accordingly prayed that the elections of defendant no.1 be conducted by appointing an observer so as to improve the transparency and impartiality or alternatively, a receiver be appointed for holding the Annual General Meeting and thereafter conduct the elections. A restraint order has also been sought to the effect that no arrears of dues be permitted to be collected by the defaulting members after 10.03.2011, as ordered by the Managing Committee.

6. The defendant club has filed the reply to the interim application and contested the claim. It has raised a preliminary objection that after having filed the earlier suit bearing No. 2418/2010, which was disposed of vide a consent order dated 07.12.2010, the plaintiff has purported to have abandoned all his reliefs which are sought to be racked up afresh by the present suit. It is stated that in pursuance to the directions passed by this Court on 07.12.2010, individual notice as well as public notice was inserted in newspaper requiring the defaulting members to clear their arrears within 30 days which period admittedly expired on 15.01.2011 and, thereafter, the matter was placed before the Managing Committee on 21.2.2011, which was also contested by the plaintiff. It is stated that the managing committee in its wisdom decided that one more opportunity be given to the defaulting members to clear their dues up to 10.03.2011 and there was no violation of the rules of the club in this regard.

7. The learned counsel further contended that in pursuance to the said time having been given up to 10.03.2011, the electoral roll was to be prepared on 11.03.2011 which has already been done and the elections are slated to be held on 27.03.2011 as a general body meeting was also fixed in between.
8. It is stated that elections could not be held on 20.03.2011 on account of festival of Holi and since the process of election has already been set into motion and the managing committee in its wisdom in order to have greater transparency and impartiality and on the request of the Election Officer, associated two more members with the Election Committee to assist him. This decision was taken by the Managing Committee to which the plaintiff was a party, therefore, there is absolutely no justification for appointing an observer or a receiver for the purpose of conducting elections.
9. I have carefully considered the respective submissions made by the parties and have gone through the entire record. There is no dispute about the fact that the Court had disposed of the earlier suit vide its order dated 07.12.2010 by the consent of the learned counsel for the parties and set a time schedule for the purpose of defaulting members to clear the arrears. In pursuance to the said schedule, it is also not disputed that individual notice as well as public notice were

issued giving a period of 30 days time for the purpose of clearance of arrears which period expired on 15.01.2011. After the expiry of the aforesaid period, the managing committee was directed to take a decision with regard to the fact that as to whether a particular defaulting member is to be expelled or not. No doubt, the managing committee has given another opportunity to the defaulting members to clear the arrears. The question which arises for consideration is whether granting of another opportunity up to 10.03.2011 to the members could be construed as a violation of the Court order. It may be pertinent here to refer to the relevant rule dealing with the defaulting members.

“10. Arrears :

(a) Any member who fails to pay his/her subscription in the manner laid down in the rules and regulation shall be called upon by the Hony. Secy. in writing to pay the same within 30 days from the date of issue of such demand. In case the demand is not complied with the matter shall be placed before the Managing Committee who may in their discretion either direct further notice to be issued to the member in question and /or remove his/her name from the rolls.

(b) No member whose name has been struck off from the list of members for such arrears, shall be readmitted unless he/she pays his/her arrears along with a restoration fee of Rs.100/- within 30 days of the date of which his /her name has been struck off.”

10. A perusal of the aforesaid rules will clearly show that in case notice of demand raised by the General Secretary to clear the

arrears is not responded timely, then the matter is to be placed before the Managing Committee which has discretion to give further notice. Thus, the Managing Committee was well within its power to give further time for clearing the arrears. Since the time to clear the arrears was expiring on 15.01.2011 and thereafter, the matter was placed before the Managing Committee, which chose to give them time till 10.3.2011, I feel that there was nothing wrong or improper much less illegal in case the Managing Committee grant one more opportunity to the defaulting members to clear the arrears up to 31.12.2010.

11. Having done so, it has been informed by Mr. Gupta, learned counsel for the defendant club that the electoral list has already been prepared and the election schedule has already been set into motion and the elections are slated for 27.03.2011. In my view, it will not be just and proper for the Court to appoint an observer or a receiver for the purpose of conducting the elections as any such appointment at this belated stage will only have an adverse impact on electors in exercising their right to free and fair elections. It also cast a shadow on the impartiality of the Chief Election Officer. I have been informed that the Chief Election Officer Mr. B.K. Aggarwal who is conducting the election had requested two more members of the Club to be associated in the election process, which was acceded to by

the Managing Committee unanimously of which petitioner was a part. It is further stated that Mr.B.K.Goel was also the Chief Election Officer for the previous elections which were held in 2008 and if there was no issue regarding his impartiality at that time how it could be an issue now. Therefore, I feel that at this belated stage, appointing any court observer or a receiver will tantamount to undue interference in the domestic affairs of a club which is to be run essentially by the general body or through its representative body which is known as Managing Committee and once the election process is complete, in case the plaintiff still feels that there is any illegality or violation of the statutory rule or regulation of the club which has not permitted a proper representative body of the club to come into position, he would be free to redress his grievance.

12. For the reasons mentioned above, I feel that the plaintiff has not been able to make out a prima facie good case and the balance of convenience is certainly not in favour of the plaintiff as the process of election has already been set in motion and is at an advanced stage. There is no irreparable injury likely to be caused to the plaintiff. On the contrary, in case the elections are stayed or somebody from outside is appointed as an observer or a receiver, it is not going to send a correct signal to the members of the club, whose decisions

may get influenced while exercising franchise. I accordingly dismiss the application of the plaintiff.

13. Let the written statement be filed by the defendant within 30 days.
14. Post the matter before the learned Joint Registrar for filing of written statement on 27th May, 2011.

OCTOBER 14, 2011
MA

V.K. SHALI, J.