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

+ **RFA(OS) 88/2012**

Decided on : 8th April, 2013.

THROW BALL FEDERATION OF INDIA Appellant
Through Mr. Sanjeev Narula with Mr. Sunil Dalal,
Advocates.

versus

UNION OF INDIA & ORS Respondents
Through Mr. Neeraj Chaudhari, Central Government
Standing Counsel with Mr. Ravjyot Singh,
Advocate for UOI.
Mr. Sudhir Nagar, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The appellant/plaintiff questions the judgment and order dated 13th August, 2012 by the learned Single Judge rejecting the plaint in CS (OS) No.844/2010 on the ground that the relief claimed was time barred.

2. The plaintiff claims to be the true and lawful Throw Ball Federation of India. In the plaint, it is averred that the Society was registered sometime in 1982 to represent the interests of and to promote the growth of Throw Ball in India. It is alleged that the third defendant, represented by one Sh. T. Ramanna, also claimed as a Throw Ball Federation of India and started to approach the first defendant, i.e. the Government of India. The plaintiff alleged that in these circumstances, it filed a suit before the Sub Judge, First Class, being CS No.229/1989, which

resulted in a decree of permanent injunction restraining the third defendant from organizing any tournament under the name and style of, “Throw Ball Federation of India”, anywhere in India.

3. It appears that the third defendant, in turn, filed a suit in the Bangalore court seeking a declaration and consequential injunctive relief, which resulted in a decree against the plaintiff sometime in 1996 by the concerned court in Bangalore. The plaint refers to a series of representations and queries made under the Right to Information Act, and also proceedings under Article 226 of the Constitution of India in WP(C) No.5974/2008, which culminated in an order dated 11th September, 2008, by which the Government of India was directed to give a personal hearing to the plaintiff. It also referred to certain contempt proceedings initiated on account of inaction of the Government of India.

4. The third defendant appears to have filed another writ petition, being WP(C) No.12785/2009, seeking to quash the order dated 13th May, 2009, by which the Government of India had held that this Federation could not be recognized. This Court dismissed WP(C) No.12785/2009 on 4th November, 2009 and apparently upheld the order of the Government. Ultimately, the matter went to the Division Bench of this Court which remitted the matter for consideration.

5. Upon being served, the respondent/third defendant alleged that the suit was time barred since the plaintiff’s relief of declaration was premised upon a stale cause of action. It was contended that the averments made in the plaint itself revealed that the defendant’s existence was known right from 1991; third defendant also referred to the letters of 2003 and 2005 to contend that, in these circumstances, declaratory relief sought, was not available in terms of Articles 58 and 59 of the Limitation Act, 1965.

Counsel for the third defendant also contended that the relief of injunction was consequential and not a disjunctive or a separate relief having regard to the totality of the averments in the suit. The third defendant had placed reliance upon the judgment of the Supreme Court in **Khatri Hotels Pvt. Ltd. & Another v. Union of India & Another, 2011 (9) SCC 126**, to hold that the relief of declaration was time barred. The impugned order also referred to certain documents which had been placed on the record by the plaintiff, and a specific averment, to hold that so far as the main relief-declaration, was concerned, cause of action had accrued prior to 11th January, 2003 and since the suit was filed in 2012 hence time barred.

6. It is argued on behalf of the plaintiff that the approach and order of the learned Single Judge is erroneous. The plaintiff refers to an application of the defendant seeking a direction for the stay of proceedings pending before the Director (Sports) to await the final decision in the suit. It is contended that besides this, since both the parties had obtained decrees against each other, there was no determination vis-a-vis their status as far as the Central Government was concerned. It was also argued that having regard to the circumstances averred in the suit, it was apparent that the government itself was hesitant to decide the disputed facts-some of which pertained to allegations of forgery committed to aid the third defendant. It was argued lastly that the culmination of the order of the Government meant that the plaintiff could file suit, for a determination once and for all, having regard to the material on record, as to which of the two organizations was lawfully constituted and could legitimately represent the interests of the game in India.

7. Counsel for the respondent relied upon the decision in the impugned order and urged that the court should not interfere with it. It was

submitted that the plaintiff moved the writ petition before this Court only in the year 2008, being WP(C) No.5974/2008; till then it was bound by the judgment of the Bangalore court in 1996 which in fact declared it (third defendant) to be the lawful organization as against the claim of the plaintiff. In these circumstances, the plaintiff could not have sought the declaration since cause of action had accrued much earlier. In any event, the question was no longer open for debate, as the declaration by the Bangalore court acted as *res judicata*.

8. This Court notices that in both proceedings-first initiated by the plaintiff/appellant before the Jind court and the second by the third defendant/respondent before the Bangalore court, the Central Government was not impleaded, consequently, the relief of either permanent injunction granted or the declaration issued could, at best, be said to bind the parties to the suit. However, as far as the Central Government was concerned, its stand is reflected in those proceedings, fresh statement made on its behalf by the Standing Counsel appeared to be that the forum for determination as to which is the legitimate society, properly constituted and entitled to represent the interests of the concerned game in India is the court of competent jurisdiction. In these circumstances, this Court is of the opinion that as regards the third defendant's arguments that the relief of declaration was time barred is insubstantial. The confusion, which arose on account of rival decrees obtained by the contesting parties, was sought to be resolved to an extent by the Central Government that it appears to have made an order pursuant to a direction by this Court. However, that order was eventually set aside. Since there is no dispute about the fact that both parties are levelling serious allegations not only with regard to their constitution but also with regard to the management of affairs which even contain allegation

of fraud and forgery etc.; the most appropriate forum to decide this matter or, in fact, the legitimate forum would be courts of law which would consider the averments and, having regard to submissions made, record findings that would bind all. It is in these circumstances that the impleadment of the Central Government as the first and second defendant in the present suit is significant. The plaintiff's move to implead the Central Government appears to have been on account of developments that occurred post 2008. In the opinion of the Court, having regard to these factual materials which were part of the record, as far as averments made in the plaint are concerned, learned Single Judge fell into error in holding that the declaratory relief was time barred. There is no dispute that the injunctive relief is consequential to the declaratory reliefs claimed in the suit by the appellant.

9. In view of the above reasoning, the Court is of the opinion that the suit, being CS(OS) No.844/2010, should have been permitted to proceed on the merits. The impugned order resulting in the rejection of the suit is set aside. The suit is restored to its original position on the file of the court.

10. List the suit on 2nd May, 2013, before the concerned Judge according to roster allocation.

11. The appeal is accordingly allowed. No order as to costs.

S. RAVINDRA BHAT, J

SUDERSHAN KUMAR MISRA, J

APRIL 08, 2013

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