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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1023 OF 2016
IN
FIRST APPEAL NO. 432 OF 2016

Rajesh Chunilal Meghani .. Appellant
Vs.
The Andheri Recreation Club & Ors. .. Respondents

Mr. Priyadarshan V. Shah for the Appellant.
Mr. Rajkumar Mishra for Respondent Nos.1 to 3.
Mr. R. S. Apte, Sr. Advocate a/w. Mr. Dilip H. Shukla for Respondent Nos.4 to 6.
Mr. Ruchir Tolat i/b M/s. L. C. Tolat & Co. for Respondent Nos.12 & 16.
Mr. Sunny Punamiya for Respondent No.8.

CORAM : G. S. KULKARNI, J.
DATE : 24th NOVEMBER, 2016.

P. C. :

1. Heard learned counsel for the appellant and learned counsel for the respondents.
2. Following are the prayers as made in this Civil Application:
 - "a. *pending the hearing and final disposal of the above Appeal, this Hon'ble Court be pleased to pass an Order to the effect that the Applicant continues to be a member of Respondent No.1, The Andheri Recreation Club and is allowed to use all its facilities.*
 - b. *pending the hearing and final disposal of the above Appeal, the Respondents, their servants and agents, be temporarily restrained by an order and injunction of this Hon'ble Court, from expelling the Applicant from the membership of The Andheri Recreation Club or otherwise acting upon or in pursuance of the suspension of the Applicant as a member of The Andheri Recreation Club and the resolution to that effect and/or causing any interference in his membership rights in future or doing any act to undermine or reduce or adversely affect the Applicant's rights as such member.*
 - c. *pending the hearing and final disposal of the above Appeal, this Hon'ble*

Court be pleased to stay the effect, implementation and enforcement of the purported and attempted suspension of the Applicant as a member of The Andheri Recreation Club.

- d. Interim and ad-interim Orders be granted in terms of prayers (a) to (c).*
- e. such other and further orders, reliefs and directions be granted, as the nature and circumstances of the case may require*
- f. for costs of this Application."*

The prayers are similar to the final prayers which are made in the Suit before the Trial Court which came to be disposed of by the impugned Judgment and Order dated 30.01.2016 in terms of the following order passed by the learned Trial Judge.

- "1. It is hereby held that the Civil Court is having no jurisdiction to entertain the suit.*
- 2. Notice of motion No.183/2016 is hereby disposed of accordingly."*

3. The learned Trial Judge reached the above conclusion inter alia in view of the specific provisions of Sections 50 and 51 of the Bombay Public Trust Act as Defendant No.1 being a Public Trust the Civil Court would have no jurisdiction to entertain the suit as there was no compliance of the said provisions of the Bombay Public Trust Act. There is a further order dated 26.02.2016 whereby though the initial order dated 30.01.2016 held that the suit is not maintainable for lack of jurisdiction, the Trial Court proceeded to reject the plaint under Order 7 Rule 11(d) of the CPC. This was at the instance of the appellant/plaintiff in view of as the appellant/plaintiff moving Notice of Motion No. 21 of 2016 seeking such orders in view of the decision in the case of **Noor Mohd. Vs. Maharashtra**

Housing and Development Board, 2014(1) Mh.L.J. 92. The effect of both the orders dated 30.01.2016 and 26.02.2016 is the same that the learned Trial Judge held that the Civil Court has no jurisdiction to entertain the suit.

4. Be that as it may, the contention as urged on behalf of the appellant/applicant in this Civil Application that the reliefs as prayed in this civil application as noted above be granted pending the hearing and final disposal of the appeal. In support of the said prayers, the contention is that no show cause notice was issued by respondent No.1/defendant No.1 before passing the suspension order dated 19.11.2015 as also no hearing was granted. The submission is that before an order of suspension is made a hearing ought to have been granted as the principles of natural justice were attracted. In my opinion the submission is misconceived. The power to suspend a member was available to respondent No.1 under the Constitution of the Club, as conferred by Rule 17, which reads thus:

**17 POWER OF
TEMPORARY
SUSPENSION**

If any member refuses or neglects to comply with any of the Bye-laws, Rules, Regulations or Decisions of the Club or has been guilty of such conduct, as the Governing Council of the Club considers detrimental to the prestige or interest of the Club or is likely to endanger harmony of the Club, he shall be liable to be cautioned, suspended from the Club by Resolution adopted by majority at the meeting of the Governing Council of the Club. Provided however that the Office Bearers may temporarily suspend a member for the reasons stated above, for such time not exceeding the date of the immediate next Governing Council.

On a plain reading of the above rule the contention as urged on behalf of the applicant that the principles of natural justice are required

to be followed before issuing a suspension order cannot be accepted. Even otherwise such contention cannot be accepted.

5. I have also perused the notice issued convening the meeting of the Governing Council dated 05.11.2015. Para 6 of the notice specifically records the agenda item in regard to the course of action to be taken in regard to the appellant/plaintiff which reads thus:

"6. To discuss & place on record the present status of the legal matter before City Civil Court filed by Mr. Rajesh Meghani - Governing Council Member against all the Trustees & present Governing Council Members & further decide about future course of action to be taken about legal matter & also against Mr. Rajesh Meghani."

Thus the contention as urged on behalf of the appellant on the basis of the above agenda that the appellant could not have been suspended cannot be accepted. The provision conferring power to suspend as noted above is very clear. The further contention that even the notice of the meeting of the Governing Council was not given to the appellant who was himself a member of the Governing Council would also not assist the applicant in as much as sufficient power was available to the Governing Council under Rule 17 to pass an order as permissible under the Rule.

6. Considering the nature of the reliefs as prayed, the reliefs are in the nature of final mandatory reliefs and can be granted only if the appellant succeeds in the suit/appeal. The facts and circumstances also do not warrant that these reliefs can be granted at the interim stage. The

Civil Application is therefore misconceived and is accordingly rejected. No costs.

7. At this stage, learned counsel for the applicant seeks protection. The same is opposed by the learned counsel for respondent No.1. Admittedly, there was no ad interim protection of the suspension in favour of the appellant during the pendency of the suit. The prayer cannot be accepted and is, accordingly, rejected.

[G. S. KULKARNI, J.]