

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.06.2017
PRONOUNCED ON : 29.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

S.A.No.193 of 2012

Mr.PL.Ravikumar

... Appellant/Appellant/
Plaintiff

Versus

The Gandhi Nagar Club,
Rep by its Secretary
Gandhi Nagar, Adyar,
Chennai-600 020.

... Respondent/Respondent/
Defendant

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree of the learned IV Additional City Civil Judge, Chennai in AS.No.261/2009 dated 06.07.2011 confirming the Judgment and Decree in OS.No.7597/2006 on the file of the learned XV Assistant City Civil Judge, Chennai, dated 07.08.2008.

For Appellant : Mr.V.Prakash,
Senior Counsel assisted
by Mr.P.Chandrasekaran

For Respondent : Mr.T.V.Sekar

JUDGMENT

The plaintiff who was unsuccessful before the Courts below is the appellant herein.

2. The appellant / plaintiff filed a suit in O.S.No. 7597 of 2006 on the file of the Court of XV Assistant City Civil Judge, Chennai, against the respondent/defendant praying for a judgment and decree, declaring that the Termination of his Membership by the respondent/defendant under the so-called General Committee meeting held on 12.09.2015, as null and void and restore his membership and for permanent injunction restraining the respondent/defendant-Club or any of its men, servants or representative or agents in any manner preventing him from using the Club and also for cost.

3. It is avered by the appellant / plaintiff that he is the member of the defendant-Club ever since the year 1995 and his membership Number is R-190 and he paid a non-refundable Membership fee of Rs.10,000/- at the time of joining the Club and the plaintiff would further aver that ever since he joined the Club, he uses all the facilities of the Club and being an active member, he is prompt in making the payment and other expenses on the due date.

4. It is stated by the appellant / plaintiff that the respondent / defendant sent a notice dated 16.06.2005 (Ex.A1) to the residential address of the plaintiff under Rule V[3] of the Bye laws, calling upon him to pay a sum of Rs.5539.20p., representing the Bill dated 31.03.2005 and a sum of Rs.5583.70p., representing the Bill for the month of April 2005, totaling to a sum of Rs.10952.90p. and it is further stated in the notice that the Joint Committee has taken a final decision that his Membership will cease without any further notice, unless the defendant/Club receives the payment within 15 days from the date of receipt of the notice. The plaintiff would further state that he was away from Chennai, with his family during June and July 2005 and was in Hyderabad, preoccupied with his personal work and therefore, he was not aware of the notice. The notice dated 16.06.2005 (Ex.A1) was delivered in the residence by a person, whose name is not known to him and such a delivery was effected to his Personal Secretary on 23.06.2005 and his Personal Secretary has also informed about the receipt of the notice. However, the plaintiff could not break-up his schedule and return from Hyderabad and therefore, instructed his Personal Secretary to send a Fax message dated 06.07.2005 [Ex.A2] informing about his stay in Hyderabad and requested for extension of time to clear arrears on or before 31.07.2005.

5. The plaintiff, on his return from Hyderabad, sent a Cheque dated 28.07.2005 drawn on City Union Bank Limited for a sum of Rs.11,926/- and another Cheque dated 29.07.2005 for a sum of Rs.601/- toward Bill No.3164 with a covering letter thereon and made a request to issue the stamped receipt and permit the usage of the Club. However, the respondent / defendant-Club refused to acknowledge the same. The plaintiff would further aver that despite the receipt of payment, he was not allowed to use the facilities and hence, he sent a Fax message dated 18.08.2005 [Ex.A5] to the respondent / defendant-Club, informing that he cleared all the arrears on 30.07.2005 and he has no further dues to the Club. But, however, the Computer generated Message would indicate that "terminated member cannot generate k.o.t" and the appellant / plaintiff once again requested the defendant-Club to permit the usage of the facilities of the Club and however, he was not permitted to do so.

6. It is the claim of the appellant/plaintiff that the respondent / defendant-Club, unilaterally acted in a denial mode to permit the usage of the facilities of the Club which amount to arbitrariness and high-handedness and it is also without any bonafides and also would further aver that under Rule V[3] of the Bye-laws, the defendant is under obligation to send a Registered Notice for any arrears before ordering removal of Membership. It is also stated by the appellant / plaintiff that though the respondent / defendant-Club was aware of the fact that he was out of station, sent a notice dated 21.07.2005 regarding the Termination of Membership and it was not personally received by him, as he was out of station. In sum and substance, it is the case of the plaintiff that the Termination from the respondent / defendant-Club is arbitrary and high-handed and the decision of the Joint Committee Meeting held on 12.09.2005, terminating the Membership after a lapse of four months without any proper notice is whimsical, arbitrary and vindictive and despite the fact that the payment has been received without any protest, his Membership has not been restored and as a consequence, he has been prevented from using the facilities and hence, he has come forward to file the said suit.

7. The defendant-Club filed the written statement denying the averments made in the plaint and would contend that they sent a notice on 16.06.2005 (Ex.A1) to the residential address of the plaintiff under Rule V[3] of the Bye-laws calling upon him to make payment of Rs.5539.20p., representing the Bill dated 31.03.2005 and a sum of Rs.5583.70p., representing the Bill for the month of April 2005, aggregating to a sum of Rs.10952.90p. and he was granted 15 days time to make the payment and they have acted well within the Rules for making such a demand. The defendant-Club would further contend that despite the fact that the appellant / plaintiff was away from Chennai, and was in Hyderabad at the relevant point of time, still he could have made the payment; but he did not do so. It is also stated by the defendant that in the notice dated 16.06.2005 sent by RPAD, it has been clearly indicated that no further correspondence will be entertained and denied that the Termination of the Membership of the plaintiff is vindictive, arbitrary and unethical and therefore, prays for dismissal of the suit.

8. The Trial Court on going through the pleadings has formulated the following issues for trial:-

- Whether the plaintiff is entitled to the relief of declaration as prayed for?
- Whether the plaintiff is entitled to relief of permanent injunction as prayed for?
- To what other relief the plaintiff is entitled to?

9. During the course of trial, the plaintiff examined himself as P.W.1 and marked Exs.A1 to A8. One of the officials of the defendant-Club was examined as D.W.1 and Exs. B1 to B5 were marked.

10. The Trial Court on a consideration of pleadings and appreciation of oral and documentary evidences, has dismissed the suit without cost vide judgment and decree dated 07.08.2008.

11. The plaintiff, aggrieved by the dismissal of the suit filed an appeal in AS.No.281/2009 on the file of the Court of IV Additional Judge, City Civil Court, Chennai.

12. The Lower Appellate Court on going through the Memorandum of grounds of appeal has formulated the following points for determination:-

- Whether the appellant/plaintiff is entitled to the relief of declaration and also for permanent injunction as prayed for?
- Whether an Appeal has got to be allowed?
- What other points are available in this Appeal?

13. The Lower Appellate Court found that the Bills were raised for the outstanding dues for the months of March and April 2005 and despite the receipt of Ex.A1-Notice, the appellant / plaintiff did not make the payment on time.

14. The Lower Appellate Court has also taken into consideration the settled legal position that Civil Courts would have no jurisdiction to interfere with the affairs of the Society and that the jurisdiction of the Civil Court is limited and only the acts done are without jurisdiction and if there is any violation of principles of natural justice, the Civil Courts can interfere with the affairs of the Society and found that no documentary evidence has been adduced to show that the appellant / plaintiff has made the payment on time. The Lower Appellate Court has also taken into consideration the Bye-laws/Rule V[3] and further taken into consideration the ratio laid down in the decision rendered by the Honourable Supreme Court of India reported in AIR 1963 SC 1144[T.P.Daver Vs. Lodge Victoria No.363, S.C.Belgaum and others] as well as the decision rendered by a Division Bench of this Court reported in 2001 [3] CTC 349 [Chennai Kancheepuram Tiruvelore District Film Distributors Association rep.by its Secretary and another Vs. Chinthamani S.Murugesan and 4 others], held that the a duty is cast upon the members to follow the Rules and Bye-laws strictly and when it is not followed, the decision taken by the Club is binding on the member and since the amount due and payable has not been tendered on time coupled with the admission on the part of the plaintiff/P.W.1, he is not entitled to relief sought for by him

and citing the said reasons, has dismissed the appeal vide impugned judgment and decree dated 06.07.2011. Hence, this Second Appeal.

15. This Court, while admitting the Second Appeal, has formulated the following substantial question of law:-

"Whether the respondent club has violated the bye-laws in expelling the appellant, bye-law Rule 5[3], in expelling the appellant by giving notice under respondent under Ex.A1 requesting the appellant to settle the dues within 15 days when bye-law Rule 5[3] requires to be displayed on the notice board, giving 30 days time to settle the dues which procedure admittedly has not been followed by the respondent / Club?"

16. Mr.V.Prakash, learned Senior counsel assisted by Mr.P.Chandrasekaran, learned counsel appearing for the appellant made the following submissions.

[a] Bylaws/Rule V[3][c] contemplates that a defaulting member shall be put on notice of default, by a Registered Post and if within thirty days of such notice, such dues are not fully settled, the defaulter shall cease to be a member of the Club and admittedly, the notice by Registered Post and Acknowledgment Due, has not been sent by the respondent/defendant-Club and the personal delivery was effected at the residence of the appellant/plaintiff and since he was away in Hyderabad, he could not receive it and his Personal Secretary has received it and it was informed to the appellant/plaintiff, who sent a Fax message under Ex.A2, praying for time to make good a payment and on return, has also remitted the amount and as such, he cannot be termed as a Defaulter and the non-payment cannot be termed as willful.

[b] Since the Bye-law/Rule V[3][c] has not been complied with in letter and spirit, delay if any, on the part of the appellant / plaintiff cannot be construed as willful or wanton and to show his bona fide, the appellant/defendant on his return from Hyderabad immediately made payments by issuing two Cheques which were also received and acknowledged without any reservation or protest and as such, the notice of Termination of Membership is to be declared as null and void with a consequential order, permitting him to use the facilities of the Club as a member.

17. Per contra, Mr.T.V.Sekar, learned counsel appearing for the respondent/defendant-Club has drawn the attention of this Court to the pleadings and reasons assigned by the Courts below and would submit that the Division Bench of this Court in the decision reported in 2001 [3] CTC 349 [cited supra], after

taking into consideration the decision rendered by the Honourable Supreme Court of India reported in AIR 1963 SC 1144 [cited supra], has held that the principles of natural justice is not required to be applied with in the same degree of rigour as there would be in the case of adjudication before a Court or Tribunal and admittedly, personal service of the notice has been effected and it was also acknowledged by the Secretary of the appellant/plaintiff and though the notice has stipulated 15 days time, the appellant/plaintiff did not make payment and he made the payment only after the expiry of 30 days period and in the light of the same, the Rule V[3][c] has been strictly complied with and insofar as the submission put forth by the learned counsel appearing for the appellant that notice has not been sent by Registered Post Acknowledgment Due, it is the submission of the learned counsel appearing for the respondent/defendant-Club that in the light of the ratio laid down in the above cited decisions, the principles of natural justice is not required to be complied with a same degree of rigor and substantial compliance would be enough and admittedly, Ex.A1-Notice dated 16.06.2005 was served on the Personal Secretary of the appellant / plaintiff on 23.06.2005 and if 30 days time is calculated from that date, the appellant/plaintiff ought to have paid the dues on or before 22.07.2005, but he has made the payment on 28.07.2005, i.e, beyond the period of 30 days and having admitted that he was in arrears of subscription, did not care to make the payment within the stipulated time and hence, his Termination of the Membership is perfectly valid. It is also the submission of the learned counsel appearing for the respondent/defendant-Club that the findings rendered by the Courts below are concurrent in nature, based upon thorough appreciation of evidence and facts and this Court, in exercise of jurisdiction under Section 100 CPC may not interfere with the same and prays for dismissal of the Second Appeal with cost.

18. This Court paid its best attention and also perused the typed set of documents as well as the original records.

19. In terms of the substantial question of law framed by this Court at the time of admission, it is the case of the appellant / plaintiff that the Rule V[3] requires notice to be displayed on the Notice Board and 30 days time is to be granted to settle the dues and since the said procedure has been given a go by, interference is warranted.

20. The appellant/plaintiff who has examined himself as P.W.1, in proof affidavit filed in lieu of chief examination would state that under Bye-law/Rule V[3], the defendant-Club can only send notice for any arrears which stands unpaid for more than 3 months and in the notice dated 16.06.2015 [Ex.A1], the defendant-Club had wrongly calculated the amount of Rs.5583.70p.

and the defendant-Club is not entitled to do so. It is further stated by the appellant / plaintiff / P.W.1 that the amount paid by him has been received without any protest and if really the termination is automatic after the expiry of 30 days, the defendant-Club ought not to have accepted the same. P.W.1 in the cross examination has admitted about the schedule of payment of subscription and further admitted that since, he did not make the payment of arrears of subscription, Ex.A1-Notice was correctly sent and denied the suggestion that his termination is in accordance with the Bye-Law.

21. The Honorary Secretary of the respondent / defendant - Club was examined as DW1 and in the cross-examination, he would depose with regard to the termination of the Membership, the General Council has to take a decision and denied the suggestion that the termination of the appellant is not in accordance with the Bye-Law and also denied the suggestion that since necessary amendments has not been registered with the Registrar of Societies, it is not valid.

22. It is relevant to extract Rule V[3] of the respondent / defendant - Club, which reads thus:-

"Rule V[3]:-

[a] Charges incurred by the members while using the facilities and amenities of the Club may be paid by cash or cheque at the cash counter with regard to such charges payable to a limit or limits that may be prescribed for the various facilities and amenities provided by the Club.

[b] All dues incurred by a member shall be settled by him by the end of the month following that in which it was incurred. No member shall be permitted to make use of the facilities and amenities of the club unless his dues are settled within the time laid down as aforesaid.

[c] Where a member defaults in payment of his dues, his name may be put up on the Notice Board as a defaulter. The defaulting member shall be put on notice of the default by registered post and if within thirty days of such notice such dues are not fully settled the defaulter shall cease to be a member of the Club."

23. Rule V[3][c] contemplates that if a member defaults in payment of his dues, his name may be put up on the Notice Board as a defaulter and he shall be put on notice of default by a notice sent by Registered Post and if within thirty days of such

notice, such dues are not fully settled, the defaulter shall cease to be a Member of the Club.

24. Admittedly, under Ex.A1-Notice dated 16.06.2005, the appellant / plaintiff was given fifteen days time to make good the arrears of subscription and it was not sent by the Registered Post ; but only by personal delivery and it was delivered to the Personal Secretary of the appellant / plaintiff on 23.06.2005.

25. In the decision reported in 2001 [3] CTC 349 [cited supra], the plaintiff therein was made as an Associate Member and it was put to challenge by filing a suit on the file of this Court and the learned Single Judge of this Court, has granted an order of ad-interim stay, staying the Resolution passed by the Executive Committee in making the plaintiff as an Associate Member on the ground that the principles of natural justice has been violated and that some of the charges levelled against him are also vague. A Division Bench of this Court, in the above cited decision, after taking note of the submissions made, has observed as follows:-

".....
5 The Executive Committee of a voluntary association cannot be put on par with a Court or a Tribunal when dealing with the disciplinary matters concerning the membership of the Body. They have a very wide latitude in deciding as to when disciplinary action is warranted, and the extent to which the powers vested in them under the rules or byelaws should be exercised while penalizing the members for the misconduct which the appropriate Body within the association empowered to decide that question, considers him to be guilty. The procedure to be followed by such an association also cannot be that which is normally expected to be followed in a Court, or a Tribunal. Every letter written by the Executive Committee of an association to it's member calling for an explanation is not to be judge under a lens to find out the possible defects therein for the purpose of holding that the action that followed was not in consonance with the principles of natural justice. Even principles of natural justice are not required to be applied with the same degree of rigour as they would be in the case of adjudication before a Court or a Tribunal.

6. What is required of such bodies is that they act fairly in a broad way without having to

imitate the Courts and Tribunals, with regard to the rigour and the formality of the procedures. Such bodies are of course expected to act in accordance with their own rules, and stay within the limits imposed by those Rules. If the Body vested with the power under the Rules, exercise that power within the ambit of the Rule, after having afforded an opportunity to the member concerned to have his say in the matter, the decision rendered by such Committee cannot be regarded as illegal, or violative of natural justice, or as arbitrary. The Courts will not sit in appeal over the decisions of such Committees, subject to such decision being broadly in consonance with the general standard of fairness.

7. In *P. Dever v. Lodge Victoria*, AIR 1963 SC 1144, the Supreme court quoted with approval the following observations of the Privy Council in the case of *Lennox Arthur Patrick O' Reilly v. Cyril Cuthbert Gittens*, AIR 1949 PC 313 at p.136 thus:

"It is important to bear in mind that neither the learned Judge nor their Lordships Board is entitled to sit as a Court of appeal from the decisions of a domestic tribunal such as the Stewards of the Tribunal Truf Club."

"All these matters, however, are essentially matters for the domestic tribunal to decide as it thinks right. Provided that the tribunal does not exceed its jurisdiction and acts honestly and in good faith, the Court cannot intervene, even if it thinks that the penalty is severe or that a very strict standard has been applied."

8. The Apex Court in that case, after examining the merits by the case brought before it which concerned the expulsion of a member of a masonic lodge after the appropriate body within it had found him to be guilty of several charges of misconduct, concluded with the following observations:

"Lastly an attempt was made to persuade us to resurvey the entire material and test the correctness or otherwise of the decision of the Lodge. As we have pointed

out earlier, civil courts have no jurisdiction to decide on the merits of a decision given by a private association like Lodge. Both the Courts below have held that the Daughter Lodge has acted in good faith in the matter of the complaint against the appellant. That is a concurrent finding of fact, and it is the practice of this Court not to interfere ordinarily with concurrent findings of fact..."

26. In paragraph No.10 of the said judgment, it is observed that "as regards the alleged violation of the principles of natural justice, the Court, if satisfied that there has been broad fairness, must refrain from interfering with the action taken by the voluntary association of which, the plaintiff chose to become a member of his own volition. Natural justice in the conduct of such Associations would not have the same degree of rigour, as those principles would have in matters which are required to be adjudicated upon before the Courts and Tribunals and satisfied that the broad fairness that has been observed and a Voluntary Association is entitled to carry on its affairs in accordance with its own Rules and a person becoming member of such a Body, contracts to be bound by those Rules and by the actions taken by those in whom power is vested under the Rules." In the considered opinion of the Court, though the notice has not been sent by Registered Post Acknowledgment Due, granting the appellant / plaintiff to clear the arrears of subscription within 15 days from the date of receipt of the notice, the fact remains that Ex.A1-Notice dated 16.06.2005 was served on the Personal Secretary of the appellant / plaintiff on 23.06.2005. The appellant / plaintiff under Ex.A2-Fax Message dated 06.07.2005, has informed about the fact of his stay at Hyderabad and also prayed for time and on his return from Hyderabad on 28.07.2005, had drawn two cheques dated 28.07.2005 and 29.07.2005, for a sum of Rs.11,926/- and Rs.601/- respectively and it was received and acknowledged by the respondent / defendant - Club.

27. If thirty days time is calculated from the date of receipt of Ex.A1-Notice on 23.06.2005, the appellant / plaintiff ought to have made the payment on or before 22.07.2005 and admittedly, he has issued two cheques on 28.07.2005 and 29.07.2005 respectively for clearing the arrears of subscription and it is beyond the period of thirty days contemplated under Rule/Bye-Law V[3][c].

28. Though the respondent / defendant - Club has accepted the said payment without protest, the fact remains that the payment has not been made within the time stipulated under the

said Bye-Law. The ratio laid down in the above cited decision is that in the above cited decision, the principles of natural justice are not required to be applied with the same degree of rigour as they would be in the case of adjudication before the Court or Tribunal and if the power is exercised within the ambit of the Rule after having afforded an opportunity to the member concerned to have a say in the matter, the decision rendered by such a Committee cannot be regarded as illegal or against the principles of natural justice or as arbitrary. In the case on hand, the appellant / plaintiff has been afforded with a reasonable opportunity to clear the arrears of subscription for two months and in the cross-examination as P.W.1, the appellant/plaintiff would admit that he should have cleared the arrears of subscription by the end of the succeeding month and admittedly, he has not done so. The respondent / defendant - Club has substantially complied with the requirement of the Bye-Law and it is also be remembered at this juncture and it is also observed in the above cited decision that a Voluntary Association is entitled to carry on its affairs in accordance with its own Rules and a member contracts to be bound by those Rules and actions taken by those, with whom the power is vested under the said rules.

29. As per the substantial question of law raised in this Second Appeal, the appellant/plaintiff is aggrieved by the non-display of the Notice on the Notice Board and non-granting of 30 days time. However, the evidence available on record would indicate that display has been put up on the Notice Board and though 15 days time was granted under Ex.A1-Notice, the appellant / plaintiff has made the payment beyond 30 days from the date of receipt of the Notice on 23.06.2005 and as such, his termination of Membership from the respondent / defendant - Club is a proper one. Therefore, the substantial question of law is answered in negative against the appellant/plaintiff.

30. This Court, on an independent application of mind to the entire materials, is of the considered view that there is no error apparent or perversity attached to the findings rendered by the Courts below and finds no merit in the Second Appeal.

31. In the result, Second Appeal is dismissed confirming the judgments and decrees passed by the Courts below and however, there shall be no order as to cost.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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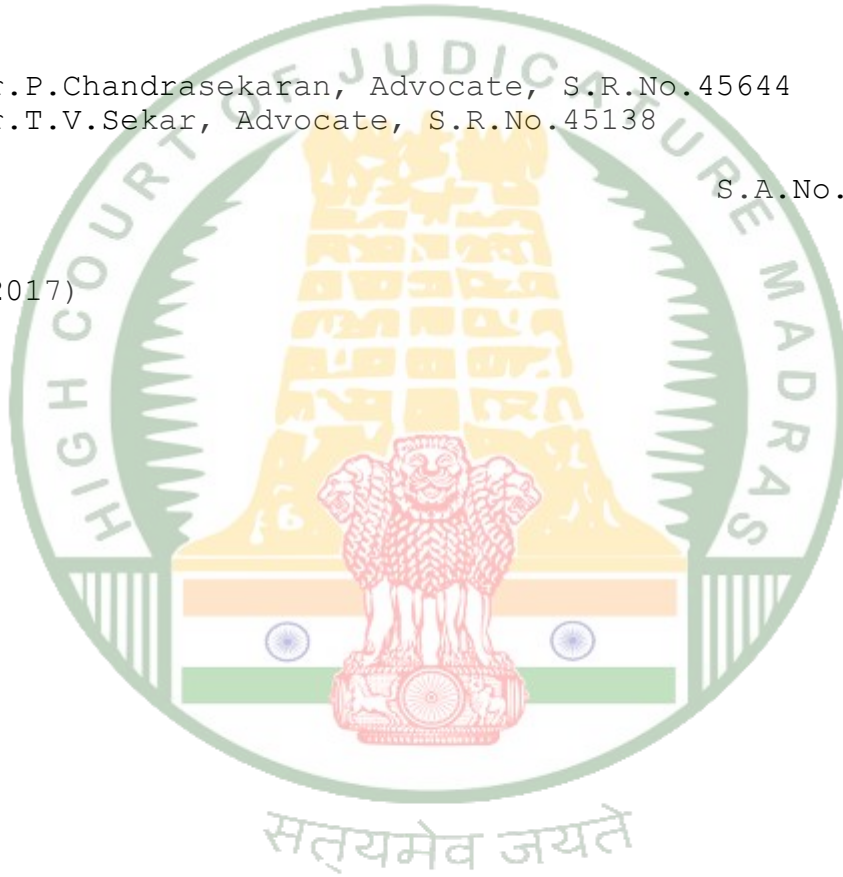
To

1. The IV Additional Judge,
City Civil Court,
Chennai.
2. The XV Assistant Judge,
City Civil Court,
Chennai.

+1cc to Mr.P.Chandrasekaran, Advocate, S.R.No.45644
+1cc to Mr.T.V.Sekar, Advocate, S.R.No.45138

S.A.No.193 of 2012

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