

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.10.2017

PRONOUNCED ON : 26.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1099 of 2001

M.C.Thangavelan

...

Appellant/Plaintiff

Vs.

1. Cercle De Pondicherry,
rep. by its President,
S.Selvagandhi.

2. The Secretary G.Mahadevan,
Victor Samuel Street,
Pondicherry

...

Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 12.04.2001 in A.S.No.126 of 2000 on the file of the Additional District Judge, Pondicherry reversing the judgment and decree dated 25.07.2000 in O.S.No. 117 of 2000 on the file of the Additional District Munsif Court, Pondicherry.

For Appellant : Mr.P.Mathivanan

For Respondents: Mr.A.Umapathi

for M/s. G.M.Mani Associates

JUDGMENT

The plaintiff in this second appeal has impugned the judgment and decree dated 12.04.2001, passed in A.S.No.126 of 2000, on the file of the Additional District Judge, Pondicherry, reversing the judgment and decree dated 25.07.2000, passed in O.S.No. 117 of 2000, on the file of the Additional District Munsif Court, Pondicherry.

2. The parties are referred to as per their rankings in the Trial Court.

3. Suit for declaration and mandatory injunction.

4. The case of the plaintiff in brief is that he became the life member of the defendant's club by paying necessary amount in the year 1995 and the plaintiff has been very regular in clearing the house bills. While so, on 29.01.2000, at about 7.30 p.m., when the plaintiff was in the club, one Murugan, a staff of the club, demanded the house bill arrears from the plaintiff in public, for which, the plaintiff replied that all the arrears have been cleared and advised him not to behave like that in the presence of other members and he had no right to claim for the arrears and thereafter, according to the plaintiff, he left the club along with others and it is further stated that the above demand of the house bill arrears by Murugan is a scheme planned by the President of the club against the plaintiff, on account of previous enmity and on 30.01.2000, the defendant's club issued a show cause notice alleged to have been lodged by Manager of the club for the incident which took place on 29.01.2000, to which the plaintiff sent a suitable reply. However, the defendant's club served an order on the plaintiff, dated 06.02.2000, terminating his membership from the club arbitrarily and without conducting any enquiry and hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants in brief is that as per the instructions of the Manager of the club, the staff were directed to collect the house bills arrears from the members and accordingly, one Murugan had requested the plaintiff to submit the house bill arrears and while the same was enquired by Murugan, the plaintiff got wild suddenly and started shouting and abusing the office staff and executive members of the club in a filthy language and took a liquor bottle, broke it and throw it at the centre hall of the club and resultantly, the normal peaceful activities of the club were disturbed for three days and the plaintiff had misbehaved earlier, during the year 1997 and if the plaintiff is allowed to continue the same, it would defame the members of the club and also throw a challenge to their safety and on the complaint dated 30.01.2000, by bearers, office staff, club manager, the plaintiff was called upon to show cause and the plaintiff gave reply to the same and after due enquiry, the plaintiff was terminated from the club with effect from 06.02.2000, unanimously, in accordance with the provisions of the Memorandum and Articles of Association of the club and hence, the suit laid by the plaintiff is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Exs.A1 to A19 were marked. On the side of the defendants Dws 1 to 4 were examined and Exs. B1 to B17 were

marked.

7. On a consideration of the oral and documentary evidence and the submissions made, the Trial Court was pleased to decree the suit as prayed for in favour of the plaintiff. On appeal, the First Appellate Court reversed the judgment and decree of the Trial Court and resultantly, by allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Impugning the same, the present second appeal has been preferred.

8. At the time of the admission of the Second Appeal, the following substantial question of law was formulated for consideration.

1. Whether the lower appellate Court is correct in allowing the appeal without reference to the absence of proof of Ex.A-6 complaint, particularly when the author of the same, namely the Manager of the Respondent club has not been examined by the Respondents?

9. On being terminated from the membership of the defendant's club, the plaintiff has laid the suit for appropriate reliefs. Now according to the plaintiff, he being the member of the defendant's club was regular in submitting the house bill arrears and accordingly, cleared all the house bills arrears. While so, at the instigation of the Manager of the club, one Murugan demanded house bill arrears from the plaintiff in public on 29.01.2000, to which the plaintiff had replied about the clearance of all the house bill arrears by him regularly and as per the devised scheme, the complaint had been lodged against the plaintiff, as if, he has misbehaved rudely when Murugan demanded the house bill arrears from him on 29.01.2000 and accordingly issued show cause notice with reference to the same on 30.01.2000, to which, the plaintiff has sent a suitable reply and despite the same, according to the plaintiff, as his membership had been terminated by the defendants arbitrarily without conducting any enquiry, according to the plaintiff he has been necessitated to lay the suit for appropriate reliefs.

10. Per contra, it is the case of the defendants that on the instructions of the Manager of the club, one Murugan requested the plaintiff to clear the house bills arrears if due and to the same the plaintiff misbehaved rudely and suddenly in a wild manner, started shouting and abusing the members of the club and the executive officers in a filthy language and took a liquor bottle, broke the same and threw it at the centre hall of the club and disturbed the normal peaceful activities of the

club for nearly three days and the plaintiff has been reprimanded for his misbehaviour earlier during the year 1997 and as the misbehaviour of the plaintiff continued and if the same is further allowed to stay, it would endanger the safety of the club members and also the reputation of the club and accordingly, on the complaint preferred by the Manager of the club, the plaintiff had been issued show cause notice for the incident which occurred on 29.01.2000 and the plaintiff submitted an explanation to the same. The club, in accordance with the provisions of the Memorandum and Articles of Association of the club, decided to terminate the plaintiff from the membership of the club with effect from 06.02.2000 and accordingly, issued necessary orders and hence, it is stated that the plaintiff has been, in accordance with the rules of the club, terminated from the membership of the club and hence, the plaintiff is not entitled to obtain the reliefs sought for and the suit is liable to be dismissed.

11. The Termination order issued to the plaintiff expelling him from the membership of the defendant's club has been marked as Ex.A9. It is found that the above said termination order has come to be issued for the misbehaviour of the plaintiff on 29.01.2000. Now, according to the plaintiff, he being the member of the club, is very regular in the submission of the house bill arrears and despite the same, one Murugan, at the instigation of the Manager of the club, demanded house bill arrears in public and despite the reply of the plaintiff that he had cleared the house bills arrears without default, according to the plaintiff, on account of the previous enmity, he had been served with a false show cause notice by the club, at the instigation of the Manager of the club, and despite explanation submitted by the plaintiff to the same, according to the plaintiff, he has been arbitrarily terminated from the membership of the club without conducting any enquiry and hence the suit for appropriate reliefs.

12. It is found that from the evidence adduced by the defendants, particularly, DW2 Murugan and DW4 Sekar and the complaint given by the above said witnesses marked as Ex.B11 and B16 respectively and also the contents of the complaint lodged by the Manager of the club marked as Ex.A6, it is seen that on instructions of the Manager of the club, DW2 had demanded the plaintiff about the house bill arrears and the plaintiff took exception to the same and started misbehaving in a rude manner and thereby, abused the members, one and all, in a filthy language and also took a liquor bottle and broke the same, resulting in the disturbance of the peaceful activities of the club for three days and hence, it is seen that the plaintiff had been duly issued a show cause notice for the above said misbehaviour and the plaintiff had though replied to the same,

his explanation found to be not acceptable, it is found that the club, in accordance with the Memorandum and Articles of association, terminated the membership of the plaintiff with effect from 06.02.2000.

13. In this connection, as rightly found by the First Appellate Court, it is found that the Memorandum and Articles of association of the defendant's club has been marked as Exs.A2 and B4 and it is seen that as per the Article 5(f), membership of the club shall be terminated, if one is found guilty of misconduct in the club premises. Further, as per the Article 14 (g), no servant of the club shall be reprimanded or punished or abused by the members and Article 14(j) speaks about the right of taking cognizance and action by the executive members in the event of conduct of any member in the premises of the club being injurious to the reputation and character of the club and as per the article 14(1), in the case of repetitive misbehaviour, the committee is empowered to expel the members for such misbehaviour and on such expulsion, the member shall not be allowed to apply for membership of any category at any time in future. It is thus found that as per the Memorandum and Articles of association of the defendant's club various provisions have been made for initiating appropriate actions against the members for their misbehaviour.

14. Now, as seen from the evidence of DW2 and DW4 the complaints marked as Exs.B11 and B16 respectively and also as seen from the averments contained in the complaint Ex.A6 preferred by the Manager of the club, it is found that the plaintiff has disturbed the peaceful atmosphere of the club by his rude behaviour on 29.01.2000, when he was demanded for the house bills arrears by DW2 and it is further found that the plaintiff had abused the members, staff and others in a filthy language and also broken up a liquor bottle and thereby, caused disturbance to the peaceful functioning of the club for several days. Therefore, it is found that the plaintiff's misbehaviour warrants action as per the Memorandum and Articles of association of the club. In this connection, we have the reliable evidence of DWs 2 and 4 and DW1, the Secretary of the club has also tendered evidence with reference to the same and also the complaint lodged by the Manager of the club, Ex.A6, was marked during the examination. As rightly determined by the First Appellate Court nothing has been culled out by them to disbelieve their version that the plaintiff had misbehaved improperly as stated by them on 29.01.2000. It is thus found from the evidence of DWs 1, 2 and 4 and the other connected documents pressed into service by the defendants, it is seen that without any iota of doubt the plaintiff had misbehaved rudely when demanded for the house bills arrears by the above said person (DW2) as instructed to him by the Manager of the

club. In such view of the matter, when the member of the defendant's club can be punished for misbehaviour as provided under the Memorandum and Articles of association of the club, it is seen that the club had rightly initiated necessary action as per the rules against the plaintiff.

15. It is further found that the plaintiff was given a show cause notice duly as regards the misbehaviour on the alleged date and the receipt of the show cause notice has not been disputed by the plaintiff. It is found that the plaintiff has sent an explanation to the same. In such view of the matter, the explanation submitted by the plaintiff being found to be unacceptable, it is seen that the executive members had decided to terminate the membership of the plaintiff from the club, taking into consideration, his earlier misbehaviour during the year 1997. In this connection, from the evidence of DW3 and Ex.B13, it is found that on earlier occasion also the plaintiff had misbehaved in the club for which, action had been initiated against him. It is thus found that the misbehaviour of the plaintiff on 29.01.2000, repeatedly occurring on the part of the plaintiff and accordingly, it is seen that the executive committee of the club, having the right and powers to expel the member from the club as per the Memorandum and Articles of association and considering the incident which took place on 29.01.2000 in right perspective based upon the materials placed, determined to expel the plaintiff from the club and issued the termination order to the plaintiff. Thus, this found to be in accordance with the rules framed as per the Memorandum and Articles of association of the club.

16. It is mainly contended by the plaintiff's counsel that no enquiry was conducted before the issuance of the termination order, marked as Ex.A9. However, as rightly determined by the First Appellate Court, considering the Memorandum and Articles of association of the defendant's club marked as Exs.A2 and B4, it is found that no enquiry is contemplated as such for initiating action against the member of the club for their alleged misbehaviour. In so far as this case is concerned, the action initiated against the plaintiff is not for the first time and on the other hand, the plaintiff has repeatedly misbehaved in the club premises. In such view of the matter, it is found that the executive committee of the defendants club had rightly terminated the membership of the plaintiff from the club. The plaintiff's counsel contended that the plaintiff has not been shown to be kept pending any of the house bill arrears and therefore, the action initiated against the plaintiff is not warranted. However, the position remains that the action initiated against the plaintiff is not for submitting the house bills arrears. On the other hand, the action initiated against the plaintiff is for his misbehaviour in the club premises on

29.01.2000, which episode has been clearly testified by the witnesses examined by the defendant's club. That apart, it is found that before the termination, the plaintiff had been provided with an opportunity to show cause against the action to be taken against him and as the reply to the same given by the plaintiff was found to be not acceptable, considering the previous conduct of the plaintiff, it is seen that the executive committee of the defendant's club had decided to expel him from the club's membership.

17. It is contended on part of the plaintiff's counsel that the Manager of the club namely the author of Ex.B6 complaint has not been examined. However, considering the evidence adduced by the defendants in this matter, through the mouth of DWs 1 to 4 and the documents pressed into service and it is found that DWs 2 and 4 are direct witnesses to the occurrences which took place on 29.01.2000 and when their evidence establish the misbehaviour perpetrated by the plaintiff on 29.01.2000 without any ambiguity or doubt and when the same is also corroborated by the contents of Ex.A6 complaint, it is found that the failure of the defendant's club to examine the author of Ex.A6, as such, would not in any manner prejudice the defence of the defendants or strengthen the plaintiff's case as such. Therefore, it is held that the non-examination of the author of Ex.A6 complaint would not in any manner vitiate or undermine the defence projected by the defendants or the termination order of the defendant's club expelling the plaintiff from the club. In such view of the matter, the substantial question of law formulated in this second appeal is answered against the plaintiff and in favour of the defendant's club.

18. Still the counsel for the plaintiff contended that the principles of natural justice have not been followed in taking action against the club. However, as seen from the discussions made above and also the materials placed, it is found that due opportunity had been provided to the plaintiff before initiating action against him and only on considering all the relevant materials, previous misconduct of the plaintiff and also the subsequent misbehaviour of the plaintiff on the fateful day i.e. 29.01.2000 coupled with the evidence adduced in the matter, it is found that the executive committee had, on the basis of general standard of fairness by providing adequate opportunity to the plaintiff, terminated his membership in a lawful manner as provided in the Memorandum and Articles of Association of the club. It is thus found that in this case broad fairness has been observed and such being the position, the action of the defendant's club in expelling the plaintiff from the membership of the club cannot be faulted in any manner and particularly cannot be held to be vitiated on account of the violation of any principles of natural justice as pleaded by the plaintiff. In

this connection, the principles of law outlined in the decision reported in 2001 (3) CTC 349 (Chennai Kancheepuram Tiruvelore District Film Distributors Association Vs. Chinthamani S.Murugesan and 4 others) relied upon by the defendants counsel are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

19. In the light of the above discussions, the second appeal does not merit acceptance and accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any is closed.

Sd/-
Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

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To

- 1.The Additional District Judge,
Pondicherry
- 2.The Additional District Munsif,
Pondicherry.

Copy To

The Section Officer,
VR Section, High court,
Madras. (2 Copies)

+1cc to Mr.G.M.Mani Associates, Advocate SR.No.75817

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VD (CO)
GN (08/01/2018)

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