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

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Date of Decision: 17.02.2017

+ CM(M) 189/2017

DILIP TULI & ANR

..... Petitioners

Through Mr.Rupesh Kumar, Advocate.

versus

THE COUNTRY CLUB & ORS

..... Respondents

Through Mr.Anoop Bagai, Sr. Advocate with
Mr.Ankit Jain and Mr. Anand Sharma, Advocates
for R-1 & 3.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

CAV 154/2017

Since the counsel for caveator has entered appearance, the caveat stands discharged.

CM(M) 189/2017 and CM Nos. 6240-41/2017

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 01.02.2017 passed by the appellate court dismissing the appeal of the petitioner. The petitioner had filed an appeal against the order of the trial court dated 22.12.2016 dismissing the interim application filed under Order 39 Rules 1 & 2 CPC by the petitioner/plaintiff.

2. Respondent No. 1 is a Society registered under the provisions of the

Society Registration Act, 1860 and is running a club in Sainik Farm area. A complaint was received by respondent No. 1 from one of its members making allegations about misconduct against the petitioners on 9.10.2016. On the basis of the complaint, a show cause notice was issued on 10.10.2016. Oral hearing was also given to the petitioner. On 12.12.2016 the petitioners were informed that they have been found guilty of misconduct for indulgence in indecent behaviour with ladies etc and that they have been suspended from using the facilities of the Club w.e.f. 15.12.2016 till 15.3.2017. The petitioners thereafter filed the present suit challenging the said order of the respondent.

3. The trial court in a detailed order noted that there have been complaints against one of the petitioners on earlier occasions where he was suspended and debarred, the basis on which suspension has been made are serious allegations and cannot be ignored and that a person who seeks equity must do equity. The trial court held that the petitioners have failed to establish a prima facie case and in the peculiar circumstances no interim injunction order can be passed against the respondent and the application was dismissed.

4. The appellate court disposed of the appeal filed by the petitioners by its order dated 26.12.2016. In the appeal the appellate court concluded that the injunction application is pending for consideration. It held that on account of heavy burden of work the trial court could not hear the matter, it observed that by declining an injunction one-third of the period for which the petitioners have been debarred from using the respondent club facilities would be completed and hence an interim injunction order was passed in favour of the petitioners restraining the respondent club from prohibiting the

petitioners from using the facilities of the respondent club in terms of the letter dated 12.12.2016. The matter was remanded back to the trial court stating that an endeavour will be made to dispose of the application within four weeks from the date of hearing.

5. Against the said order of the appellate court dated 26.12.2016 a petition being CM(M) 14/2017 was filed before this court. This court noted that the appellant court has wrongly concluded that the injunction application is pending before the trial court and has remanded the matter back to the trial court. It also noted that the appellate court had failed to note the parameters for grant of injunction, namely, existence of a prima facie case, balance of convenience and irreparable loss and injury. No findings were recorded on the said parameters. Accordingly, this court quashed the order of the appellate court dated 26.12.2016 and remanded the matter back to the appellate court.

6. By the impugned order the said appeal has been heard and dismissed.

7. A perusal of the impugned order would show that it has rejected the contentions raised by the petitioners on the submissions that principles of natural justice were not followed. The appellate court held that the petitioners were served with a communication dated 12.10.2016 and were given an opportunity to file a written reply. Thereafter the petitioners were given personal hearing before the disciplinary committee on 12.11.2016. It is only after following this procedure, a communication dated 22.12.2016 was issued passing an order against the petitioners. Hence, the appellate court concluded that the petitioners were given due opportunity. It also noted the settled legal position as stated by a catena of judgments that internal affairs of the societies/club should not normally be interfered with

by the court and the clubs/societies should be allowed to decide their own affairs. The appellate court also concurred with the trial court to the effect that the petitioner No.2 had not approached the court with clean hands and he had failed to disclose in the plaint about the earlier incidents that had taken place in this regard.

8. I have heard the learned counsel for the parties.

9. Learned counsel for the petitioners has reiterated the contentions about the failure of the respondents in adhering to the principles of natural justice, the fact that one of the person against whom a complaint had been filed, namely, Dr. Rajvir Singh has been let off scot free and lastly that the allegations made against the petitioners are grave and have the effect of maligning and defaming the petitioners.

10. In my opinion, the petitioners have failed to give any cogent reason as to why this court should interfere in the orders of the lower courts. Respondents have followed the principles of natural justice. Opportunity to file a reply was given. A personal hearing was given and thereafter, a decision has been communicated to the petitioners.

11. Regarding the contention of the petitioners that one of the persons against whom a complaint was made, namely, Dr. Rajvir Singh has been let off, in my opinion, this argument does not in any manner help the petitioner. In any case, as is apparent from the order, the said Dr. Rajvir Singh was let off on account of the fact that this was the first time that a complaint has been received against him.

12. The last contention raised by the petitioner was that the order of respondent No. 1 dated 12/12/2016 has the effect of maligning the reputation of the petitioner and hence a stay should be granted. Prime facie

at this stage the trial court and the appellate court have accepted the facts as stated in the order of the respondent dated 12/12/2016. It is for the petitioner to further pursue the remedies as per law by pursuing the present suit.

13. In any case, it is the settled legal position that the civil court would be slow to interfere in the internal functioning of a club/society. Reference in this context may be had to the judgment of this court in the case of ***Ashok Kumar & Anr. v. SBI Officers Association & Anr., (2013) 201 DLT 433, MANU/DE/1010/2013*** where this court held as follows:

“44. Now, it is time to discuss the scope of interference of this court in the matters of expulsion of the members from association or club which is extremely limited unless there exists manifest illegality which goes into the root of the matter. It is well settled principle of law that the Bye laws or articles of the association are made for the internal management of the association and should not be lightly interfered with by the courts on the basis of the violation of Bye law.

45. Thus, the court’s interference in such matters is an exception to the general rule that the internal management of the Society must be preserved, the societies are not allowed to be run by the courts direction and the decision taken by the society should be respected. This view is prevalent in the field and it is also said that the normal rule of suits between private individuals must be distinguished from the suits between the social club, societies and its members. In the case of clubs and societies, the general principle governing the right of the individual shareholder or member of the company would apply. Hence, it is clear that not every violation of Articles or rules or Bye-laws of the society may give cause of action to the individual member to insist the compliance of the rules and quashment of decision making of the society.

14. Above legal position has been reiterated in the judgment of this court in *Kailash Chand Bansal vs. Punjabi Bagh Club & Ors. in CS(OS) 1848/2012 dated 20.11.2013*.

15. The appellate court and trial court have passed concurring orders. In my opinion, there is no occasion for this court to exercise its power of superintendence under Article 227 of the Constitution to interfere with the orders passed by the lower courts.

16. In view of the above, the petition is dismissed. All pending applications also stand dismissed.

JAYANT NATH, J

FEBRUARY 17, 2017

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