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

+ **FAO(OS) No. 371/2016**

Date of decision: 22nd September, 2017

M/S CHELMSFORD CLUB LIMITED Appellant

Through Mr. Sankalp Goswami & Mr.
Azhar Alam, Advocates.

versus

RAVINDRA NATH SAHNI & ORS. Respondents

Through Ms. A. Banerji, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

With the consent of the learned counsel for the parties, we are disposing of this intra Court appeal under Section 10 of the Delhi High Court Act, 1966 allowing IA No. 13323/2016 filed by the respondent No. 1-plaintiff.

2. The respondent No. 1, namely, Ravindra Nath Sahni, has filed a suit for injunction against the appellant, which is a club in Delhi.

3. IA No. 13323/2016 filed by the respondent No. 1-plaintiff under Order I Rule 8 read with Section 151 of the Code of Civil Procedure, 1908 (Code, for short), is rather short and reads as under:-

“1. The Plaintiff has filed the accompanying Suit to safeguard the best interests of the Defendant Club. The interest of the Plaintiff in the present proceedings is representative of the interests of each and every member of the Defendant Club.

2. The Plaintiff accordingly seeks the liberty of this Hon’ble Court to sue on behalf of and for the benefit of the members of the Defendant Club.

In the interest of justice it is therefore most respectfully prayed that this Hon’ble Court may be pleased to:-

- a. grant the Plaintiff leave to sue on behalf of the members of the Defendant Club;
- b. issue notice upon the members of the Defendant Club by affixation upon the notice board of the Defendant Club; and
- c. pass any other and further orders as this Hon’ble Court may deem fit and just in the facts and circumstances of the present case.”

4. The said application had come up for hearing for the first time on 8th November, 2016, and was allowed on 8th November, 2016 itself. The said order records that the amended plaint filed by the respondent

No.1-plaintiff was taken on record. Thereafter, it records statement on behalf of the appellant-Club that notice on the application under Order I Rule 8 need not be issued and they would be filing a reply within four weeks. Thereupon, the impugned order mentions that the Court had enquired from the counsel for the appellant-Club as to what objection they would have to the suit being entertained under Order I, Rule 8 of the Code. The next paragraph records that the counsel was unable to argue or give any comments, but had requested four weeks' time to be granted to file reply. The single Judge having considered the nature of the reliefs claimed and grievance made in the plaint held that a case for entertaining the suit under Order I Rule 8 was made out and accordingly the application was allowed. Least there be any doubt or debate, we would reproduce paragraphs 3 to 13 of the order dated 8th November, 2016:-

“3. The amended plaint is taken on record.

4. The counsel for the plaintiff states that the suit be entertained under Order I Rule 8 of Code of Civil Procedure, 1908 (CPC) and notice of institution of the suit be issued to all persons. It is stated that there is already a group of members of the defendant No.1 Club which calls itself 'Save Chelmsford Club' and upon notice within the meaning of Order I Rule 8(2) of CPC being given,

it will be known whether anyone is willing to support the grievance as raised in the plaint.

5. The counsel for the defendant No.1 Club states that he is today unable to enter appearance on behalf of defendants No.2 to 26 being the members of the Managing Committee elected in the election held on 26th September, 2016.

6. Though it appears that the counsel representing the defendant No.1 Club which is a Corporation necessarily acting through its Managing Committee, does not have instructions from the Managing Committee but it is deemed appropriate to issue notice to the other defendants.

6. Issue summons of the suit and notice of the applications for interim relief.

7. Summons/notice are accepted by the counsel for the defendant No.1 Club appearing on advance notice.

8. The plaintiff to serve the defendants No.2 to 26 by all modes including dasti returnable before the Joint Registrar on 30th January, 2017.

9. The counsel for the defendant No.1 Club states that notice under Order I Rule 8(2) of CPC be not issued and the defendant No.1 be permitted to file a reply thereto within four weeks.

10. I have enquired from the counsel for the defendant No.1 Club as to what is the objection to the suit being entertained under Order I Rule 8 CPC and notice within the meaning of Order I Rule 8(2) CPC being issued.

11. Though he is unable to state any but states that four weeks time be given to file the reply.

12. Considering the nature of the reliefs claimed and the grievances made in the plaint, I am of the view that a case for entertaining the suit under Order I Rule 8 CPC is made out.

13. Accordingly, IA No.13323/2016 is allowed.”

5. Counsel for the appellant-Club submits that their counsel, who had appeared on behalf of the appellant-Club on 8th November, 2016 was taken by surprise when queries and questions were raised by the Court. It is submitted that even notice on the application had not been issued. Prayer for time to file reply was made.

6. During the course of hearing, learned counsel for the appellant-Club submitted that they would have several objections to the suit filed by the respondent No. 1-plaintiff being entertained and treated as representative suit on behalf of the members of the appellant-Club. The appellant-Club is a limited company and elections are held from time to time, as per law. The affairs of the company are managed in accordance with the Articles of Association, Companies Act etc. The grievance raised by the respondent No. 1-plaintiff is personal in nature and he does not have support of other members of the appellant-club. Plea of *mala fides* is also raised. Learned counsel for the appellant-Club has submitted that an order of this nature, can be misconstrued

and misunderstood by the members of the Club as an opinion by the Court. It has several consequences. Adverse inferences can be drawn.

7. Counsel for the respondent No. 1-plaintiff, on the other hand, submits that these contentions and issues have no merit. She, however, accepts that notice on the application IA No. 13323/2016 was not issued prior to 8th November, 2016 and the said application was a fresh one, which had come up for consideration before the Court for the first time on 8th November, 2016. She has also stated that elections of the club are due to be held on 29th September, 2017 and interim applications for injunction, etc. are listed on 25th September, 2017. An order of remand with direction to decide IA No. 13323/2016 before the elections would lead to chaos and difficulty. Counsel for the appellant-Club submits that in case an order of remand is passed, the application IA No. 13323/2016 can be decided after 29th September, 2017.

8. We are inclined to allow the present appeal as we feel that the appellants did not have sufficient chance and opportunity to put forth their stand and stance before IA No. 13323/2016 was decided by the single Judge. Adjudication and decision should be after the appellant-

club is granted fair and adequate opportunity to contest the assertion and case of the first respondent. We would not make any comments on merits, as there are aspects to be considered and decided by the single Judge.

9. We accordingly set aside the impugned order dated 8th November, 2016 to the extent it allows IA No. 13323/2016 under Order I Rule 8 of the Code. The said application would be heard afresh. The appellant would file reply to the said application within a period of two weeks. The respondent is at liberty to file rejoinder to the same within two weeks thereafter. The learned single Judge will fix a date for hearing in application, IA No. 13323/2016, on 25th September, 2017. The appeal is disposed of, with no order as to costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

SEPTEMBER 22, 2017
VKR