

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.909 OF 2016
ALONG WITH
CIVIL APPLICATION NO.267 OF 2018

Akash Timblo	 Appellant-Applicant
V/s.	
Cricket Club of India Ltd., Mumbai`	 Respondent

Mr. Erach Kotwal, with Mr. J.P. Kapadia, Ms. Swati and Mr. O. Mohandas, I/by M/s. Little and Company, for the Appellant-Applicant.

Mr. Vineet Naik, Senior Counsel, with Mr. Ashwin Ankhad and Ms. Hetal Mater, I/by M/s. Ashwin Ankhad and Associates, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH SEPTEMBER, 2018.

P.C. :

1. Heard Mr. Kotwal, learned counsel for the Appellant-Applicant, and Mr. Naik, learned counsel for the Respondent-Club.
2. This Appeal takes an exception to the order dated 4th May 2016 passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.4321 of 2013 filed in S.C. Suit No.3913 of 2013.
3. The said Notice of Motion was taken out by the present Appellant, under Order 39 Rule 1 and 2 of the Civil Procedure Code, 1908, seeking

the relief of temporary injunction, restraining the Respondent-Club, its Officers and Servants from giving effect to the communication issued by the Respondent herein, vide notice dated 6th July 2013 and order dated 27th August 2013, cancelling the Appellant's membership and for further relief of interim injunction for permitting the Appellant to continue to use all the facilities / services / privileges as a life-member of the Respondent-Club.

4. As per the contention of the Appellant, he has applied for the membership of the Respondent-Club in the year 2003 itself by filling-up the 'Proposal for Membership' dated 28th July 2003. In the said proposal, he has clearly stated that, he is the son of Auduth Timblo and grand-son of Modu Timblo. He has further stated therein the Membership No.4194, which was of his grand-father. According him, the said 'Proposal for Membership' was accepted by the Respondent-Club and he was given the life-membership. Accordingly, he has paid the membership charges. However, subsequently, by the impugned communication dated 27th August 2013, his membership came to be cancelled, only on the ground that, he is not the son of the Member, but the grand-son of the Member and hence, he cannot be accepted as a Member. It was informed to him that, only the son or the daughter of the Member could have been accepted as a member. It is the grievance of learned counsel for the Appellant that, the Appellant has not suppressed any information, when

he has submitted the 'Proposal for Membership' to the Respondent-Club. Therein, he has clearly stated that he was the grand-son of Mr. Modu Timblo and the 'Membership No.4194, which is stated therein, makes it clear that it was a very old archaic number and it cannot be the membership number of his father.

5. It is also submitted that, in the year 2003, when he has submitted his 'Proposal of Membership', there was no restriction and any outsider also could have applied for becoming the Member of the Club. The membership fee for both, the outsider and the son or daughter of the life-member, was same and, therefore, there was no intention at all on the part of the Appellant, to misrepresent the Respondent-Club or to suppress any material information. Hence, it is submitted that, when the Appellant has given a clear information and on that basis, his membership has been accepted, he has enjoyed the said membership for a period of ten years, then, it was not at all proper on the part of the Respondent-Club to cancel the said membership and restrain him from enjoying the Club facilities.

6. According to learned counsel for the Appellant, therefore, this was a fit case where the Trial Court should have granted the relief of interim injunction, restraining the Respondent-Club from acting upon the notice dated 6th July 2013 and order dated 27th August 2013, cancelling the

Appellant's membership and allowed him to enjoy the facilities of the Club.

7. Per contra, learned counsel for the Respondent-Club has supported the impugned order passed by the Trial Court, by pointing out that, this is not an innocuous case, wherein no attempt is made on the part of the Appellant to misguide the Club. Conversely, it is submitted that, when the application in the printed format for the 'Proposal for Membership' was very clear and it was to state only the name of the father and the membership of the father, the Appellant has cleverly added the name of his grand-father and membership number of the grand-father. Thereafter also, when the letter was issued, calling upon the Appellant's father to give his consent, at that time also, it was not informed that the Appellant's father is not the member, but the Appellant's grand-father was the member of the Respondent-Club. It is urged that, as several such cases giving incorrect and wrong information were noticed by the Club, they were scrutinized and verified. In that process, the present application and the 'Proposal for Membership' of the Appellant was found. It was also considered that, during the relevant period, when the membership of the Appellant was accepted, at that time, it was open only for the sons and daughters of the Members and not to the outsiders. In the scrutiny, as it was noticed that the Appellant is not the son of the Member, his membership was, after proper enquiry, giving him an

opportunity to show cause, was cancelled by passing a detailed order. According to learned counsel for the Respondent-Club, as the Appellant is seeking the relief, at the interim stage, which is in the nature of mandatory injunction, directing the Respondent-Club to allow him to enjoy the club facilities, such relief is rightly refused by the Trial Court. According to learned counsel for the Respondent, even if there is an error or inadvertence on the part of the Respondent-Club in admitting the membership of the Appellant, now once that mistake is noticed, the Respondent-Club cannot be directed by the order of this Court to continue with the said mistake. If such order is passed, like the present Appellant, there are several such persons, whose membership is cancelled on account of noticing the discrepancies and the misrepresentations made in the information given by them. They will also come forward and impose their membership on the Respondent. Hence, according to him, the Trial Court has rightly rejected the Notice of Motion filed by the Appellant.

8. In the considered opinion of this Court, admittedly, since the year 2013, the Appellant is not enjoying the facilities of the Respondent-Club, as his membership came to be cancelled by the impugned notice dated 6th July 2013 and the order passed on 27th August 2013. At no point of time, during this period of five years, any interim relief was granted to the Appellant during pendency of the Suit or in the course of this Appeal

also. Therefore, after the lapse of about five years granting the interim relief, at this stage, permitting the Appellant to continue to use all the facilities, services, privileges of the Respondent-Club as a 'Member', is as good as granting the relief of mandatory injunction at the interim stage of imposing the Appellant by restraining the Respondent-Club from stopping the Appellant from using its facilities and services. In the facts of the present case, no case is made out to grant such relief.

9. Secondly, after giving an opportunity to the Appellant to show cause and after considering the submissions and the say of the Appellant, the order of cancelling his membership is passed. Therefore, at this stage, the said order cannot be treated as arbitrary, so as to override the same. Thirdly and most importantly, whether the Appellant has misrepresented the facts or otherwise, the fact remains that there was an error in admitting the Appellant, the membership of the Respondent-Club. Prima facie, it appears that, only on the bonafide impression, that the membership number Appellant has quoted in his proposal is that of his father, his 'Proposal for Membership' was accepted. It is pertinent to note that, the Appellant has not, at any point of time, tried to bring the true facts before the Club. In such circumstances, whether the discrepancy is deliberate or bonafide; into which aspects, this Court cannot enter at this stage, the fact remains that, membership of the Appellant was considered under the heading of

being a son of the Member and that was not the factual position. He was not the son of the Member, but he was the grand-son of the Member. In such situation, that error, which has crept on the record, cannot be allowed to be perpetuated. As and when the Respondent-Club, in its verification, had come across such an error or discrepancy, the Respondent-Club was bound to correct the same. Hence, prima facie, that order cannot be circumvented by this Court and, therefore, at this stage, no relief of interim injunction, as claimed by the Appellant, seeking cancellation of the notice dated 6th July 2013 or order dated 27th August 2013 and for permitting him to use the facilities of the Respondent-Club, cannot be allowed.

10. The Trial Court has, therefore, rightly rejected the said relief in the Notice of Motion, which is a discretionary order. Therefore, within the scope of limited jurisdiction of this Court, against such discretionary order, this Court should not and cannot interfere therein. Hence, this Appeal stands dismissed.

11. In view of the above, Civil Application No.267 of 2018 pending in the Appeal does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]