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

Judgment reserved on : 07.09.2018

Date of decision : 20.09.2018

+ FAO 413/2018, CM APPL. 35932-35934/2018

DELHI & DISTRICT CRICKET ASSOCIATION Appellant

Through: Ms.Pinky Anand, Sr. Advocate
with Mr. Saurabh Chaddha, Mr.
Sumit, Advocates.

Versus

VINOD TIHARA & ORS

..... Respondents

Through: Mr. Salman Khurshid, Senior
Advocate with Mr. Gautam
Dutta, Mr. Sanjay Dhawan, Mr.
Antony R. Julian, Ms. Gitanjali
Kapur, Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. This FAO 413/2018 filed by the appellant, the Delhi & District Cricket Association (hereinafter referred to as the DDCA) against the respondent No.1 Mr.Vinod Tihara with the i.e., the Board of Control for Cricket in India through its Secretary and the Ombudsman (Delhi)

of the DDCA arrayed as proforma respondents No. 2 and 3 to the appeal vide which the appellant assails the impugned orders dated 28.8.2018 and 30.8.2018 of the learned Additional District Judge-06 (Central), Delhi in CS No. 5963/2018, whereby vide order dated 30.8.2018 *inter alia* the order dated 28.8.2018 has been reiterated, vide which order dated 28.8.2018, the operation of the suspension order stated to be undated and purportedly dated 14.8.2018, suspending Mr.Vinod Tihara, the respondent No.1 to the present appeal, and arrayed as the plaintiff of CS 5963/2018 as issued by the Delhi & District Cricket Association through its Board of Directors was stayed till further order/decision on the interim application filed by the plaintiff, i.e., the respondent No.1 to the present appeal under Order XXXIX Rule 1&2 of the Code of the Civil Procedure, 1908 on merits with further directions to the Delhi & District Cricket Association i.e., the respondent No.1 to the said suit and arrayed as the appellant to the present appeal, not to restrain or cause any obstruction to the plaintiff of the suit i.e. Vinod Tihara in discharge of his duties and functions as Secretary, DDCA till further orders/decisions on the interim application under Order 39 Rule 1 & 2 of the Code of Civil Procedure.

2. Vide the impugned order dated 30.8.2018, it was observed by the learned Trial Court to the effect that it found no reason to change the order dated 28.8.2018 but the defendant no.1, i.e., the Delhi & District Cricket Association, the appellant before this Court, was given an opportunity to file its written submissions within thirty days from the date 30.8.2018 and was also granted an opportunity to

defend the application of the plaintiff under Order XXXIX Rule 1 & 2 of the CPC on the merits, if in its written statement it was able to bring a new fact on record that was not presented or argued till the order dated 30.8.2018 and the application filed by the Delhi & District Cricket Association, i.e., the defendant no.1 to said suit i.e. the defendant no.1 to the said suit, i.e., the present appeal filed under Order 39 Rule 4 of the Code of the Civil Procedure, 1908 seeking vacation of the order dated 28.8.2018 was dismissed. The application of the plaintiff, i.e., the respondent no.1 to the present appeal under Order XXXIX Rule 1 & 2 of the Code of the Civil Procedure, 1908 was however kept pending to afford an opportunity to the defendant to contest it on merits on the basis of the written statement to be filed by them and the matter has since been renotified before the learned Trial Court for the date 1.10.2018.

3. The respondent No.1, who is arrayed as the only contesting respondent put in appearance and has been heard and the caveat 779/2018 was thus discharged on 7.9.2018.

4. Arguments were addressed on behalf of the appellant by the learned Senior Advocate Ms.Pinky Anand, and on behalf of the respondent No.1 by his learned Senior Advocate, Mr.Salman Khurshid, both assisted by their learned Associate counsel.

5. Written submissions have been submitted on behalf of both, the appellant and the respondent No.1.

6. The respondent No.1, admittedly, was elected as the Secretary of the Delhi & District Cricket Association i.e., the respondent No.1 pursuant to an election in its General Body in an Annual General

Body Meeting held on 30/6/2018 and contends that by virtue of Article 38 of the amended Articles of Association of the defendant no.1 i.e., the appellant herein he, the respondent no. 1 has a fixed term of three years as an Office Bearer as an Elected Secretary. The defendant no.1 to the suit i.e., the appellant is submitted to be incorporated and registered under Section 25 of the Companies Act, 1956 with no share capital and has its registered office at Feroz Shah Kotla grounds New Delhi. The defendant no.2 to the suit arrayed as the respondent no. 2 to the present appeal is the BCCI i.e., the Board of Control for Cricket in India through its Secretary which is a society registered under the Tamilnadu Societies Registration Act, 1975 and as apparent is the body responsible for the conduct of game of cricket in India and the appellant herein i.e., the DDCA is one of the 39 affiliated units of Defendant no.2 (BCCI) to which the Board provides financial grants aid etc. which DDCA otherwise has no source of income of its own.

7. The appellant i.e. Delhi and District Cricket Association is governed by the Rules and Regulations and Procedures led by the BCCI i.e. the respondent no. 2 to the present petition, and in terms of the judgment dated 09.08.2018 of the Hon'ble Supreme Court in Civil Appeal No. 4235/2014, the constitution of the BCCI i.e. the respondent no. 2 has been amended and a new constitution has come into force.

8. The Articles of Association of the Appellant have been amended to incorporate the recommendation of the Hon'ble Justice Lodha Committee report in terms of the verdict of the Division Bench

of this Court in W.P.(C) 7215/2011 dated 23.03.2018. The averments in the plaint in CS No.5963/18 pending before the learned Trial Court state that in terms of Article 38(1) of the Articles of Association of the Appellant, the Board of Directors comprises of : -

“16 Directors, out of which 3 Directors are Central Govt Nominees and one Director is to be a nominee of the Chief Controller of Accounts, NCI, of Delhi. The remaining 12 Directors are to be elected by its members in a General Meeting and shall comprise of the following:

- “(i) President (Office Bearer) .***
- (ii) Vice President (Office Bearer)***
- (iii) Secretary (Office bearer)***
- (iv) Joint Secretary (Office bearer)***
- (v) Treasurer (Office Bearer)***
- (vi) Nominee of Chief Controller of Accounts, Govt of NCT of Delhi.***
- (vii) 3 Nominee Directors nominated by the Central Govt***
- (viii) One Cricketer Director. j***
- (ix) One Woman Director***
- (x-xvi) 5 other Directors”***

9. The suit bearing C.S. No. 5963/18 filed by the respondent no. 1 i.e. Secretary of the DDCA i.e. of the appellant herein pending before the learned ADJ-06 (Central), Delhi which is for declaration, mandatory and permanent injunction, who was so elected as Secretary vide its Annual General Body meeting held in June, 2018 alleged that the genesis of the dispute which led to the institution of the suit was a principled objection raised by the respondent no. 1 herein as a responsible and law abiding Secretary of the appellant i.e. DDCA

against the formation of the Cricket Committee dated 25.07.2018 and Selection Committee on 04.08.2018 wherein a set of former Cricketers were hand-picked in such committee in alleged brazen violation and defiance of the “Conflict of Interest” norms and directives specifically laid down in the judgment dated 09.08.2018 of the Hon’ble Supreme Court in Civil Appeal No.4235/2014 and was also in violation of the already enforced Constitution of the respondent no. 2 herein i.e. the BCCI and that the individuals appointed by the appellant herein i.e. the DDCA as members of the Cricket Committees, Selectors etc. were perceived to bring the interest of the individual in conflict with the interest of the game of cricket which may give rise to apprehensions of, or actual favouritism, lack of objectivity, bias, benefits (monetary or otherwise) or linkages and that such appointments were in gross violation of the Hon’ble Division Bench verdicts of this Court in W.P. (C) No. 7215/2011 dated 23.03.2018 and 27.09.2016 respectively which categorically laid down similar guidelines and norms to prevent the conflict of interest in appointment of Cricket Committees by the appellant herein and despite many requests and objections, the President of the appellant herein and his associate did not adhere to the conflict of the interest directives and uploaded the notification for nomination of members of Cricket Committee on its website.

10. The plaintiff i.e. the respondent no. 1 herein through his plaint contended that he raised vehement objections to the process and procedure followed by the appellant herein through which the members / nominees in the Cricket Committee were being hand-

picked by the President of the appellant in utter violation of the provisions of the Article 23A(iii)(g) of the Articles of Association of the appellant and that no recommendation of the names of the probable candidates were called from the Sports Working Committee nor was any Sports Working Committee constituted deliberately despite the directives of the Hon'ble Supreme Court and Hon'ble Division Bench of this Court as also adverted to hereinabove.

11. The plaintiff of the suit i.e. the respondent no. 1 herein through his plaint contended that in terms of Article 8(3)(g) and Article (26(2)(ii) of the amended Constitution of the defendant no. 2, arrayed as the respondent no. 2 herein i.e. the BCCI, has to be complied with by the defendant no. 1 i.e. the appellant herein and all Cricket Committees, sub committees are to be nominated by the General Body of the Association from the names recommended to the governing body by the Sports Working Committee of the defendant no. 1 i.e. DDCA i.e. the appellant herein. *Inter alia* the plaintiff i.e. the respondent no. 1 to the present petition had contended that the respondent no. 1 had been declared elected on 02.07.2018 by the Court appointed Administrator Hon'ble Sh. Justice Vikramjeet Sen (retired Judge of the Hon'ble Supreme Court of India) in a meeting held at the defendant no. 1's (i.e. the appellant herein) office at 5.00 p.m. The respondent no. 1 had contended that this meeting held on 002.07.2018 at 5.30 p.m. was a mere celebrative tea meeting of the newly elected members of the governing body of the respondent no. 1 but the President of the defendant no. 1 i.e. the respondent no. 1 gave this meeting the colour of a meeting of the governing body by the

President of the respondent no. 1 herein and that no prior notice or intimation was served upon the members and that the President of the defendant no. 1 i.e. the appellant herein started taking autocratic decisions without taking the consent or informing the Secretary of the DDCA i.e. the respondent no. 1 i.e. the plaintiff of the suit of the decisions for running the affairs of the DDCA. *Inter alia* the plaintiff of the said suit claimed that on 03.08.2018 a member of the governing body of the defendant no. 1 i.e. the appellant herein had filed a complaint before the newly appointed Ombudsman i.e. the respondent no.3 in terms of Articles 61 and 62 of the Articles of Association of the defendant no. 1 to the said suit i.e. the appellant herein complaining of conflict of interest; and that the same could only be heard by an Ethics Officer of the DDCA i.e the appellant herein but no such Ethics Officer had been appointed by the DDCA i.e. the appellant herein. It was submitted by the respondent no. 1 as plaintiff of the suit before the learned Trial Court that the mandatory compliance of the verdict of the Hon'ble Supreme Court dated 09.08.2018 had not been made to hold fresh elections for the post of Woman Cricket Directors. *Inter alia* the respondent no. 1 to the present petition as plaintiff to the said suit before the learned Trial Court contended to the effect that a CEO, COO, CFO and GM were appointed by the President of the defendant no. 1 i.e. the appellant herein by way of the contractual employment in the name of the President himself whereas it was only in terms of the Constitution of the respondent no. 2 i.e. the BCCI and Articles of Association of the defendant no. 1 i.e. the appellant herein, that the Secretary was

empowered to carry out such advertisements regarding recruitment in the body and that in gross violation of transparency norms as spelt out by the Justice Lodha Committee recommendations and the Hon'ble Supreme Court and by the judgments of this Court, the details of the applicants, the shortlisted applicants, the interview board, the venue of the interview etc. were never uploaded on the website of the defendant no. 1 i.e. the present appellant and that nothing was disclosed even to the Secretary or the fellow Directors or senior employees of the defendant no. 1/ appellant regarding the recruitment process or the manner in which the recruitment was to be made. It was also submitted by the plaintiff i.e. the respondent no. 1 to the present appeal that even the ***mandatory eligibility criteria*** for the recruitment of the CEO duly laid down by the Hon'ble Supreme Court and by judgments of this Court had been deliberately tweaked and compromised pursuant to an ulterior design for the same and that in total disregard and violation of the eligibility criteria and transparency norms, the COO, GM were appointed on hefty monthly salaries by putting the DDCA in grave financial burden and by overlooking the fact that it was a non-profit organization. *Inter alia* it was contended by the respondent no. 1 through the plaint before the learned Trial Court that despite the plaintiff i.e. the respondent no.1 having sent an email to the President of the appellant seeking his consent to convene a meeting of the governing body to discuss the implications of the judgment dated 09.08.2018 and the consequence and imminent compliance by the defendant no. 1 i.e. the DDCA, the request was rejected by the President of the defendant no. 1 i.e. the DDCA, i.e. the

appellant herein for convening the Governing Body meeting and thus the plaintiff i.e. the respondent no.1 herein was left with no choice but to prevent the DDCA from a possible de-recognition disaffiliation, stopping of all grants from the defendant no. 2 and also contempt of the majesty of the directions and orders of the Courts and he consequently issued a circular to keep the committees and recruitment of the contractual employees on hold till further deliberation by the governing body of the defendant no. 1 i.e. DDCA vide circular dated 12.08.2018 issued by the plaintiff i.e. the respondent no.1 herein and that on the next date i.e. on 14.08.2018, the President of the defendant no. 1 i.e. the DDCA i.e. the appellant herein called an emergent meeting of the governing body at a luxury 7 star hotel in the city through an email and in the said meeting in an act of alleged retaliation and vengeance, the defendant no. 1 i.e. the appellant herein in an act of alleged brazen illegality and in utter disregard to the due process of law suspended the plaintiff, i.e. the respondent no.1 its elected Secretary and restrained him from using any powers conferred under the AOA and the Constitution of the defendant no. 2 i.e. the respondent no. 2 herein i.e. the BCCI.

12. The plaintiff i.e. the respondent no. 1 had contended through the plaint that the DDCA had resorted to taking illegal and excessive action of suspending its own elected Secretary without issuing any show cause or holding any prior inquiry or having it in the agenda of the emergent meeting and that the governing body meeting was illegal as the same was attended and voted by two members namely the treasurer and the Woman Cricketer although having vacated their

office by virtue of the judgment of Hon'ble Supreme Court dated 09.08.2018 and that the entire exercise in terms of the Constitution of the BCCI was *ab initio* void, *non est*, forbidden and unenforceable in law.

13. It was contended through the plaint that the defendant no. 1 i.e. the appellant herein had on 14.08.2018 issued a notice for its notice board notifying that the plaintiff / the Secretary (i.e. the respondent no. 1 herein) has been suspended and that pending suspension, the Joint Secretary shall discharge the duties of the Secretary as the Acting Secretary and thereafter after having suspended the elected Secretary, the office room no. 4 at the defendant no. 1's office lobby was occupied by the elected Secretary i.e. the plaintiff herein and his belongings were removed from his office room without any intimation or information and was allotted to the Joint Secretary instead and at present the Secretary who is under the AOA of the defendant no. 1 i.e. the respondent no.1 and also the defendant no. 2 and is the Senior office bearer than the Joint Secretary, is left without an office to sit and operate and the Joint Secretary had taken over the office room illegally and as such the action was not only unethical and illegal but was against the wishes and wisdom of the 4300 members who had elected the Secretary, i.e. the respondent no.1 herein and that the decision of the 15 member board having taken a decision to suspend an elected Secretary is an abuse of the statute governing the defendant no. 1 and is against all norms and principles of the natural justice and also is forbidden in law.

14. *Inter alia* the plaintiff i.e. the Respondent no. 1 had contended

that his suspension by the 15 members of the Governing Body of the defendant no. 1 i.e. the appellant herein was illegal, ultra vires, forbidden by statutes for the following reasons : -

“[A] The Article 47 of the AOA of the Defendant no. 1, gives no powers, authority to the 15 member Governing Body or any officials of the Defendant no.1, to suspend, expel or remove or take away or substitute the designated official powers of the Secretary being an elected Office bearer, having been duly elected by its 4300 members in an AGM.

[B] In terms of Sec 169 of the Companies Act, a Director may be removed by its General Body through a Special Resolution to be passed by a Special Majority i.e by a 3/4th majority of the total members of the General Body.

[C] Sec 179 of the Companies Act, specifically lays down the powers of the Board of Directors. The Board has no powers to "suspend or remove" a Director. It is the General body of the Company which being the appointing body can remove, expel or suspend a Director.

[D] Sec 6 of the Companies Act provides - "Act to override Memorandum, Articles etc of a Company". Any resolution which is repugnant to the provisions of the Act, becomes or be void as the case may be.

[E] No prior "show cause" of an inquiry or the right to a fair hearing was accorded to the Plaintiff before "suspending" an elected Secretary, thus violating the invaluable "Principles of Natural Justice".

[F] The matter was referred to the Ombudsman, of the Defendant without the "prior preliminary inquiry" or disclosing any "specific charge", violation of law as mandated under the BCCI regulations.

15. The plaintiff i.e. the respondent no. 1 thus contended that illegal

methods were being adopted by the DDCA through its President to tame the plaintiff i.e. the respondent no.1 herein to usurp and manipulate the working of the defendant no. 1 i.e. the DDCA in a rather illegal manner much in violation of the law laid down by the Hon'ble Supreme Court and Hon'ble Division Bench of this Court.

16. Through the contention that had been raised on behalf of the plaintiff i.e. the respondent no. 1 that on 28.08.2018 when the plaint filed was taken up for consideration, whilst placing reliance on the Articles of Association of the DDCA i.e. the appellant herein, it was contended on behalf of the petitioner i.e. the respondent no. 1 that the Board Members apparently misused Article 62 related to Ombudsman provided in the Articles of Association of the DDCA which provided that the Ombudsman appointed by the Board of Directors of DDCA can investigate any complaint received by him / her or *suo motu* and to resolve any dispute between the company, any of the entities, or among themselves by following the principles of natural justice, production of evidence and fair hearing and that the Ombudsman has the power to investigate and decide the disputes pertaining, *inter alia* to the detriment caused by Member or Administrator by an act of indiscipline to misconduct which is detrimental to the interest of the company and the game of cricket.

17. It was also contended on behalf of the respondent no. 1 herein i.e. the plaintiff that there had been no investigation or any other proceedings initiated by the Ombudsman against the plaintiff/respondent No.1 upon its reference / complaint and that the Board of Directors had issued the suspension order against the

plaintiff without issuance of any show cause notice to him neither by the Ombudsman or by the Board of Directors, depriving the plaintiff, i.e. the respondent No.1 herein the opportunity to explain his stand qua the allegations and that the Board of Directors had acted completely *de hors* the Articles of Association and in utter violation of the principles of natural justice and that the Board of Directors could not have suspended the plaintiff as no enquiry or proceeding had yet been initiated against him by the Ombudsman.

18. Vide the order dated 28.08.2018, which is the first order assailed by the appellant, the learned Trial Court observed to the effect that the Court must intervene and protect the interest of the plaintiff as defendant no. 1 had acted *de hors* the Articles of Association of DDCA, in violation of the principles of natural justice and ultra vires the powers conferred by the Articles of Association and that the plaintiff (i.e. the respondent no. 1) had a prima facie case against the defendant no.1 i.e. the DDCA (i.e. the appellant herein) and that the whimsical and arbitrary act of suspension of the plaintiff by the defendant no. 1 in misuse of its powers merited grant of an ad interim *ex-parte* injunction in favour of the plaintiff i.e. the respondent no. 1 and thus the ad interim *ex-parte* injunction stayed the operation of the suspension order purported to be dated 14.08.2018 issued by the DDCA through its Board of Directors with *inter alia* directions to the DDCA not to attempt to restrain or cause obstruction to the plaintiff in discharge of his duties and functions as Secretary, DDCA till further orders / decision upon the interim application under Order 39 Rule 1 & 2 CPC and summons of the suit and notice of the interim

application were directed to be issued to the defendants i.e. the appellant herein and the respondents no. 2 & 3 on PF, Speed Post, Dasti, returnable on 06.09.2018.

19. The application dated 29.8.2018 filed by the DDCA i.e. the appellant herein under Order 39 Rule 4 CPC seeking vacation of the *ex-parte* order dated 28.08.2018 contended that there had been concealment of facts by the plaintiff i.e. the respondent no. 1 herein and it was submitted that the respondent no. 1 was declared elected by the administration of Hon'ble Mr. Justice Vikramajit Sen on 02.07.2018 when the elected Board of Directors and the government nominated Directors of DDCA held a meeting whereby guidelines were passed including conferring powers for smooth running of the association which was also attended by the plaintiff(i.e. the respondent no. 1 herein) and a resolution was therein unanimously passed and in terms of the authority given to the President of DDCA in the meeting held on 02.07.2018 and an advertisement on the website was issued inviting applications for the recruitment of the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Security and Protocol Officer of the DDCA.

20. It was further submitted by the DDCA (i.e. the appellant herein/defendant no.1 to the suit) that on 25.07.2018 that a recruitment committee had been framed for evaluation of the applications received under the advertisement dated 14.07.2018 and on 28.07.2018, the recruitment committee recommended / selected the candidates for the post of CEO, CFO and COO and on 29.07.2018 by way of a Circular Resolution and the same was circulated among all

the Board of Directors, and that **the plaintiff i.e. the respondent no. 1 had himself had signed the said resolution dated 29.07.2018** but that on 10.08.2018, the plaintiff i.e. the respondent no. 1 herein made wild allegations against the President of DDCA of working in a dictatorial and undemocratic manner and sought to challenge the entire process of appointment of the CEO, CFO and COO and made further allegations of conflict of interest, and on 12.08.2018, the plaintiff i.e. the respondent no. 1 to the present appeal issued an office circular alongwith various other directions *inter alia* directing the appointment of CEO, COO, CFO and GM being on hold till further orders and that no contract, appointment letter, salary etc. is to be issued or released to such new appointees and that the selection committees were rendered *non est* and scrapped forthwith and that no DDCA employee shall leave the DDCA premises or serve the office bearers, Directors for their personal work or visit their personal offices or business locations and that the DDCA employees could take any orders on SMS, email, verbal etc. from the personal employees of the office bearers, Directors and that all employees would be bound to serve the DDCA from the DDCA premises alone and that all Board meetings, committee meetings shall be held at the DDCA-premises alone and no additional costs shall be incurred on TA, DA, hotel costs etc. by the DDCA and it was further directed that any contravention/violation of the above directions would lead to strict disciplinary action including termination of the violating employee.

21. The DDCA, i.e. the defendant no.1 to the Suit, i.e. the appellant herein thus submitted through its application under Order 39 Rule 4

CPC that the staff members of the Petitioner were completely confused as to what was to be done and therefore, there was almost a logjam in the working of the defendant no.1, i.e. the appellant herein and that by issuing such unilateral directions in the circular dated 12.08.2018, the Plaintiff not only undermined the authority of the Board but also created hindrance in the working and management of the Petitioner and that on 13.08.2018 a notice for calling an emergent meeting of the Board of Directors on 14.08.2018 was called in order to place on record the unilateral circular dated 12.08.2018 issued by Plaintiff i.e. the respondent No.1 herein and to further adopt other agendas and that emergent meeting of the Board of Directors was held on 14.08.2018 wherein the Board by a majority of 11:3 suspended the Plaintiff. i.e. the respondent No.1 herein with immediate effect pending enquiry before the Hon'ble Ombudsman, Hon'ble Mr. Justice Badar Durez Ahmad (retired Chief Justice of the Hon'ble Jammu & Kashmir High Court). The DDCA referred to Article 62(d) of the Articles of Association (reproduced herein below) to submit that it had the power to suspend the plaintiff in terms thereof : -

“d. Pending inquiry and proceeding into complaints or charges of misconduct or any act of indiscipline or violation of any Rules and Regulations, the concerned Member, Administrator, Player, Match Official, Team Official, or other individual associated with the Company (along with their respective privileges and benefits) may be suspended by the Board of Directors: until final adjudication. However, the said adjudication ought to be completed within

six months, failing which the suspension shall cease.”

22. The Board decided to send the complaint to the Ombudsman for conducting an enquiry and further quashed the Office Circular dated 12.08.2018 issued by Plaintiff.

23. The DDCA further contended that the entire case which has been put forth by the Plaintiff is of oppression and mismanagement and in terms of Section 241 read with 430 of the Companies Act, 2013, the Trial Court had no jurisdiction to entertain this dispute and the same ought to have been filed before the National Company Law Tribunal and submitted that the Plaintiff had further not disclosed that the correct jurisdiction to challenge the suspension order of the Defendant no.1 (i.e. the appellant herein) was with the Hon'ble Ombudsman_ Hon'ble Mr. Justice Badar Durez Ahmad (retired Chief Justice of Jammu & Kashmir High Court). The respondent no.1 further contended that the Plaintiff further failed to disclose that the Ombudsman was already seized of the matter inasmuch as the Defendant no.1 itself had forwarded not only the complaint but also the suspension order which was apparent from the suspension order itself.

24. The DDCA further contended that there was no necessity of issuance of any show cause notice inasmuch as there is no such show cause notice required under the Articles of Association of Defendant no.1 prior to suspension and that in any case, the Plaintiff being the Secretary of the Defendant no.1 had to be suspended to ensure free and fair enquiry by the Ombudsman without any interference or

hurdles that could be put by a sitting Secretary of Defendant no.1 and that the conduct of the Plaintiff during the meeting held on 14.08.2018 also did not warrant any further leniency inasmuch as when the Plaintiff was given a chance to clarify his stand, the Plaintiff continued to brow beat the Board of Directors and said that he would not permit the Board to function.

25. The defendant no. 1 (i.e. the appellant herein) through its application under Order 39 Rule 4 of the CPC further submitted that whilst acting as Secretary of the Defendant no.1, the Plaintiff (i.e. the respondent no. 1 herein) could derail the entire process of the selection of the team, coaches, managers etc. which in accordance with the Lodha Committee had to be done by the Cricketing Committee constituted of cricketers of high repute and competence and it was submitted by the DDCA that if the prayer seeking the eviction of the ad interim ex-parte injunction order dated 28.08.2018 was not granted, the Defendant no.1 will face grave and irreparable loss inasmuch as there could be a complete logjam in the functioning of the defendant no.1 during the cricketing season and important cricketing decisions might get derailed, thus hampering the game of cricket.

26. Vide the second impugned order dated 30.08.2018, the learned Trial Court observed to the effect that the defendant no.1 i.e. the appellant herein be granted an opportunity to file its written statement within 30 days whilst dismissing the application under Order 39 Rule 4 CPC, to contest the suit on merits on the basis of averments in the written statement filed by them and also by contesting the application

under Order 39 Rule 1 & 2 CPC which was also kept pending to afford the opportunity to the defendants to contest the same on merits.

27. The learned Trial Court also observed to the effect that : -

“12. I find that the primary document in contention is the Suspension Order dated 14/08/2018. This order is very brief and cryptic. It does not mention in detail how the Board of Directors was satisfied that the plaintiff had indulged in anti-company activities, committed grave act of indiscipline and gross misconduct and indulged in false allegations against the Board itself. Rather, the Board of Directors took the plaintiff by surprise as his above mentioned conduct against the interest of DDCA was not in the agenda of emergent meeting dated 14/08/2018. This order also does not reflect that plaintiff was granted an opportunity to explain the directives dated 12/08/2018 in reference to which he was put in the dock by the Board, thereby violating the principles of natural justice.

13. The Suspension Order dated 14/08/2018, prima facie, finds its basis in Clause (d) of Article 62 of the Articles of Association of DDCA. This provision does not deal with the general powers of the Board of Directors. Rather, it deals with the special situation when the Ombudsman of DDCA initiates inquiry and proceedings into complaints or charges of misconduct or any act of indiscipline or violation of any Rules and Regulations against a member, administrator, player, match official, team official or other individual associated with the company. The initiation and pendency of an inquiry and proceeding by the Ombudsman is a pre-condition and pre-requisite before the Board of Directors

becomes authorized to issue a Suspension Order. In the present case, it has not been alleged by defendant no.1 that Ombudsman of DDCA has initiated any inquiry or investigation into the reference/complaint made by it against the plaintiff. Thus, the pre-condition for exercise of the special power of suspension of plaintiff remained unsatisfied and the Board, prima facie, acted in complete violation and de hors the Articles of Association of DDCA.

14. It is trite that the Civil Courts have jurisdiction and power to intervene when the statutory authority acts contrary to law, mala fide, ultra vires its powers, arbitrarily, in violation of principles of natural justice. In such cases, the action of the statutory authority cannot be said to be under the Act but is de hors the Act.

15. I find that the assertion of defendant no.1 regarding service of caveat to the plaintiff remains unsubstantiated as no proof of service of caveat has been furnished to the Court. The photocopy of the postal receipt regarding sending of the caveat by post to the plaintiff is lacking in particulars of address of the plaintiff.

Section 430 of The Companies Act, 2013, is not, prima facie, found applicable to this case as the reliefs sought by the plaintiff cannot be granted by NCLT, neither are the reliefs sought by the plaintiff covered under the provisions of The Companies Act, 2013. I find no infirmity in the verification clause of the plaint, which seems to be in conformity with provisions of CPC.

16. Indeed, the plaintiff has prima facie case against defendant no.1 which seems to have

acted in violation of Articles of Association of DDCA. The balance of convenience favours of the plaintiff as he has been deprived of his power to work as Secretary of DDCA by the impugned Suspension Order dated 14/08/2018. He has been prejudiced in his working as Secretary, DDCA, by defendant no.1 which cannot be compensated in terms-of money. Plaintiff does not seem to have approached this Court with unclean hands as, apparently, his intention is to enforce the judgment of Hon'ble Supreme Court dated 09/08/2018 and the newly enforced constitution of BCCI (defendant no.2) as applicable to DDCA (defendant no.1) on similar lines and also Articles of Association of DDCA enforced vide the judgment of Hon'ble High Court dated 23/03/2018.

I find no reason to change the order dated 28/08/2018. However, defendant no.1 has the opportunity to file written statement within 30 days from today. Defendant no.1 shall also have the opportunity to defend the application of plaintiff filed under Order XXXIX Rule 1 & 2 CPC on merits if, in its written statement, it is able to bring a new fact on record that is not presented or argued till now. The application of defendant no.1, filed under Order XXXIX Rule 4 CPC is hereby dismissed. On the other hand, the application of plaintiff filed under Order XXXIX Rule 1 & 2 CPC is kept pending to afford opportunity to the defendants to contest it on merits on the basis of averments in the written statement to be filed by them.”

Since the defendant no.1 has been granted opportunity to file written statement within 30

days from today, the next date of hearing is hereby changed to 01/10/2018.

Any other date given earlier stands cancelled.

Copy of this order be given dasti to Ld. Counsels for parties, as prayed for.”

28. Through the submissions made on behalf of the appellant it is contended that the suspension order dated 14.08.2018 passed under Article 62 (ii)(d) of the Article of Association of the Appellant, empowers the Board to suspend a member against whom a complaint has been made before the Ombudsman and that the suspension is only temporary in nature and can extend to a period of six months or till the enquiry of the Ombudsman is completed, whichever is earlier and is only an administrative order and not quasi-judicial. It has been submitted on behalf of the appellant that there is no pre-condition required for the exercise of the Board's power under Article 62 (ii)(d) other than the complaint having been made to the Ombudsman which it is contended that the appellant had made in the instant case and that the Ombudsman has since issued notice to the respondent no.1 on 30.08.2018 and called upon the respondent No.1 to file his reply. The appellant also contended that there was no requirement of issuance of any show cause notice or any opportunity of hearing being afforded to the delinquent member but that nevertheless to bring forth his bona fides, the respondent no.1 had informed on 13.08.2018 that an emergent meeting was being called the next day to discuss the circular issued by him and was permitted to justify his stand and actions

during the meeting of 14.08.2018 and his submissions to the Board were duly recorded.

29. It was *inter alia* contended on behalf of the Appellant herein that the Secretary (i.e. the respondent no.1) being the custodian of the minutes of meeting and records of all AGMs, EGMs, SGMs had to be suspended in order to ensure a free and fair enquiry into his gross misconduct. It was thus contended on behalf of the appellant that all actions taken by the Appellant/Board were within its power.

30. It was further submitted on behalf of the Appellant that however the actions of the respondent no.1 were beyond his power as a Secretary and that the Articles of Association confer no specific power on the Secretary, much less the power to unilaterally issue circulars such as the unilateral circulars dated 12.08.2018 vide which he suspended the appointment of key functionaries such as CEO, CFO and COO. The appellant further submitted that the powers and functions of the Secretary are stated in the amended Constitution of the BCCI and even as per the BCCI Constitution, the Secretary did not have the powers he has sought to assume. The appellant as per the submission submitted that the respondent no.1 had not disclosed that he himself was a member of various sub-committees and that the CEOs, CFOs and COOs were also members of the sub-committee of the appellant and thus putting their appointment on hold greatly hampers the functioning of the appellant and brings the entire organization to a standstill.

31. It was further submitted on behalf of the appellant that the respondent no.1 had materially suppressed facts and had sought relief before the learned trial Court with unclean hands and was thus not entitled to any equitable and/or discretionary relief and that the respondent no.1 had not filed on record the Circular Resolution dated 29.07.2018 which confirms the appointment of CEOs, CFOs and COOs and confirms the committees appointed at previous meetings and the factum that the said document bears the signature of the respondent no.1 himself.

32. *Inter alia* the appellant has submitted that the respondent no.1 also did not place the minutes of meeting dated 14.08.2018 on the record which indicate that there was a detailed discussion regarding the conduct of the respondent no.1 during which he himself was present and participated in and was given an opportunity of hearing despite there not being no requirement, in law for grant of any such opportunity.

33. It was reiterated on behalf of the Appellant that the respondent no.1 ought to have approached the Ombudsman through the internal dispute resolution mechanism of the Appellant company provided in the Articles of Association itself under Article 62 which provides for the appointment of the Ombudsman and defines his powers and scope of functioning and that rather the respondent no.1 filed the suit and ought to have approached the Ombudsman for his grievance, if any and that the Article 62 covers disputes within the Members itself as well as disputes with outsiders. It is also submitted by the appellant

that even the legality of the suspension order itself could have been decided by the Ombudsman and that the Justice Lodha Committee Report states that the purpose of appointment of an Ombudsman was to reduce the judicial role and the burdening of the Courts and to expedite dispute resolution.

34. The appellant further contended that the BCCI(i.e. the respondent No.2) herein has notified its Constitution on 21.08.2018, and the time limit prescribed by the Hon'ble Supreme Court for State Associations to bring forth their Constitutions in line with BCCI would expire only on 21.09.2018 and as the consequences of non-compliance have been stated therein, thus the prayer seeking implementation of the Hon'ble Supreme Court judgment by the respondent no.1 was contended to be wholly without *locus standi* and premature and the appellant in any event submitted that it would comply with the directions of the Hon'ble Supreme Court.

35. The Appellant also contended that the suit filed by the plaintiff is not maintainable inasmuch as the plaintiff could have sought invocation of the Companies Act, 2013 and that the jurisdiction of the Civil Courts was excluded under Section 430 of the Companies Act.

36. *Inter alia* Reliance was placed on behalf of the Appellant on Part-4 of Swamy's CCS (CCA) Rules to contend that in terms of Rule-10 (1)(a) thereof, the Appointing Authority or any authority empowered in that behalf can place a Government servant under suspension where a disciplinary proceeding against him is **contemplated or is pending**. It is submitted on behalf of the

Appellant that thus the contention raised on behalf of the respondent no.1 that there was no enquiry pending in terms of Article 62 (2)(d) when the appellant suspended the respondent no.1 on 14.08.2018, is devoid of all merits as even in the cases of employees of the State, even where disciplinary proceedings are contemplated or are pending in terms of Rule 10(1)(a) of the Swamy's CCS (CCA) Rules issued by the Government of India, the delinquent official/officer can be placed under suspension.

37. Reliance was placed on behalf of the Appellant on the verdict of the Hon'ble Supreme Court in ***State of Orissa through its Principal Secretary, Home Dept. Vs. Bimal Kumar Mohanty*** (1994) 4 SCC 126 in support of its contention that pending inquiry in terms of Article 62 (2)(d) of the Articles of Association of the Appellant, the suspension of the respondent no.1 could have been ordered by its Board of Directors and was so ordered and reliance was placed on observations in para-13 & 14 of the said verdict to the effect that:

“13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide

whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.

14. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in

interfering with the orders of suspension of the respondent pending inquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with and this Court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance.”

38. Reliance was also placed on behalf of the appellant on the verdict of Hon’ble High Court of Allahabad in ***R.R. Pandey Vs. Managing Director, U.P. Jal Nigam and another*** 2003 SCC OnLine ALL 2147 to refute the contention of the respondent no.1 that all charges were detailed in the suspension order to contend that it is not necessary to mention the charges and details in the suspension order and the detailed charges can be given subsequently by a charge-sheet and that a suspension order is an administrative order and hence the rules of natural justice need not be complied with before passing a suspension order and that the rules of natural justice have to be complied with only when a penalty was imposed such as dismissal of service or reduction of salary but the suspension order *per se* is not a penalty.

39. Reliance was also placed on behalf of the Appellant on the verdict of the Division Bench of this Court in ***Satish Khosla Vs. Eli Lilly Ranbaxy Ltd.*** 1998 (44) DRJ (DB) to similar effect.

40. Reliance was also placed on behalf of the Appellant on the verdict of Hon’ble Supreme Court in ***Union of India and Another***

Vs. Ashok Kumar Aggarwal (2013) 16 SCC 147 in support of its contentions that the respondent No.1 could be suspended pending enquiry and that a suspension order is only to keep a delinquent out of mischief range and to complete disciplinary proceedings unhindered and is an interim measure in aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position and it was contended on behalf of the appellant that the respondent no.1 being the Secretary of the Appellant, he could have made misuse of his powers and that thus it was essential to suspend the Respondent No.1 from the DDCA to prevent any further damage being caused to the working of the DDCA.

41. Through the submissions that have been made on behalf of the Respondent no.1, the provisions of Article 62 of the Article of Association of the appellant company were relied upon which read to the effect that:

“62. OMBUDSMAN

- (i) *The Board of Director shall appoint an Ombudsman who shall be a retired Judge of Supreme Court of India or a former Chief Justice of High Court for the resolution of disputes existing within the Company, arising due to gross mismanagement. The Ombudsman shall be appointed once a year in AGM to investigate any complaint received her him/her or suo-moto and to resolve any dispute between the Company, any of the entries, or among themselves by following the principles of natural justice, production of evidence and fair*

hearing. The types of Disputes that form the Ombudsman ambit are as under:

- a. Member, Association & Franchisee Disputes*
- b. Detriment caused by member or Administrator by an act of indiscipline to misconduct which is detrimental to the interest of the Company and game of cricket.*
- c. Misconduct or breach by any player, umpire, Team official, Selector or any other person associated with the Company.*
- d. By the Public against the Company:
Where a member of the public is aggrieved concerning ticketing and access and facilities at stadia, the same may be brought in the form of a complaint to the Ombudsman .*

(ii) The place of hearing shall be decided by the Ombudsman from time to time. The Ombudsman shall have the power to impose penalties as provided in the Regulations for Players, Team Officials, Administrators, Manager and Match Officials of the Company.

- a. The decision of the Ombudsman shall be final and binding and shall come into force forthwith on being pronounced and delivered.*
- b. Any Administrator, Player, Match Official, Team Official, Selector or other individual associated with the Company on being found guilty and expelled by the Board shall forfeit all their rights and privileges. He or she shall not in future*

be entitled to hold any position or office or be admitted in any committee or any role on the Company.

- c. A member or Franchise once expelled, may, on application made after expiry of these years since expulsion, be readmitted by the Board, provided the same is accepted at a General Meeting of the Company by 3/4th members present and voting.*
- d. Pending inquiry and proceeding into complaints or charges of misconduct or any act of indiscipline or violation of any Rules and Regulations, the concerned Member, Administrator, Player, Match Official, Team Official, or other individual ASSOCIATED WITH THE Company (along with their respective privileges and benefits) may be suspended by the Board of Directors until final adjudication. However, the said adjudication ought to be completed within six months, failing which the suspension shall cease.”*

42. It was thus submitted on behalf of the Respondent no.1 that a bare perusal of the terms of the Article 62 of the Articles of Association of the Appellant brought forth that there must be a complaint in writing alleging and providing proof at least prima facie that the conduct of the Administrator was detrimental to the interest of the company and the game of cricket (b) that there was a validly appointed Ombudsman (c) that the complaint should have been referred to the Ombudsman and (d) that the Ombudsman must have taken cognizance of the said complaint and should have initiated an inquiry on the said complaint.

43. It was also submitted on behalf of the Respondent no.1 that the contentions raised by the Respondent no.1 that for invocation of the powers to suspend, the requirement of a written complaint with prima facie proof of the conduct of the Administrator being detrimental to the interest of the company and the game of cricket and of a validly appointed Ombudsman and of a complaint having been referred to the Ombudsman and of the Ombudsman having taken cognizance of the complaint and having initiated the inquiry on the said complaint were brought forth through the admission of the Appellant itself as the Appellant had raised a ground in the appeal admitting that the suspension can be made only during the pendency of the enquiry on filing of the complaint as indicated even in grounds K & Q of the appeal of the Appellant which read to the effect that:

“K. Because the Hon’ble Trial Court incorrectly interpreted that an enquiry or investigation into the complaint made against the Respondent No.1 is prerequisite for invoking Article 62 (ii) (d). it is respectfully submitted that the proceeding is commenced the moment the Complaint is filed.

Q. Because the learned Trial Court has erred while passing the impugned ex-parte ad-interim order by stating that Board of Directors has wrongly suspended the Respondent no.1 under Article 62(ii)(d). The Hon’ble Trial Court failed to appreciate that the powers under Article 62(ii)(d) could be exercised as soon and the said power was not circumscribed by notice or enquiry to be done by the Hon’ble Ombudsman .”

44. It was thus submitted on behalf of the Respondent no.1 that there was no complaint at the time the resolution of the suspension was passed on 14.08.2018 at 16:00 hrs; that the Extra Ordinary General Meeting of the Executive Committee was called vide notice

dated 13.08.2018 but did not refer to any complaint made by any shareholder/ Member of the Appellant company nor was there any agenda item regarding suspension of the respondent no.1 as the Secretary of the Appellant or decision to be taken on any purported complaint received by the Board of Directors. *Inter alia* the respondent no.1 contended that no show-cause notice had been issued to him prior to the said resolution being passed and no response of his had been sought qua the alleged misconduct and that the complaint was made by Mr. Rajan Manchanda only after the resolution to suspend him had been passed on an alleged complaint made by him in the Extra ordinary General Meeting on 14.08.2018 on the basis of which the appellant subsequently had filed a complaint before the Ombudsman . The respondent no.1 further submitted that the factum that the complaint was made after the resolution suspending the respondent no.1 was corroborated by the fact that the alleged complaint/ Memo of Charge dated 14.08.2018 itself referred to the suspension letter. The respondent no.1 further contended that the *malafides* of the suspension of the respondent no.1 was also corroborated by the fact that the complaint did not make a detailed charge nor list of witnesses whilst filing the purported complaint/Memo of Charge. The respondent no.1 further submitted that the extract of the complaint itself indicates that the suspension letter was passed in a hurry and the relevant extract of the complaint/ Memo of Charge was reproduced to the effect that:

“In view of the urgency involved in the matter, we are submitting the present Complaint/ Statement of

charge alongwith the Suspension Letter. The detailed Charge Sheet alongwith the documents and the list of witnesses will be submitted to the Hon'ble Ombudsman at the earliest."

45. It is further submitted on behalf of the respondent no.1 that without a complete charge sheet/ complaint having been filed before the adjudicating authority, there can be no enquiry or pendency of an enquiry and that the circular dated 12.08.2018 issued by the respondent no.1 was only with an intent to bring transparency to the working of the DDCA i.e. the appellant herein and to ensure that powers were not vested in any individual including the President of the Appellant and that this issue would be decided by the learned Ombudsman .

46. *Inter alia* the respondent no.1 submitted that all the emails and circular issued by the respondent no.1 were only addressed to the Members of the Board of the Appellant Company and was not dispersed to the public at large and thus no prejudice had been caused to the Appellant.

47. The respondent no.1 further submitted that despite it having been urged during the course of oral hearing that there was a valid appointment of the Ombudsman, no document nor formal letter of appointment was produced by the appellant pursuant to Board resolution dated 02.07.2018. *Inter alia* the respondent no.1 submitted that the respondent no.1 had in his *e-mail* dated 10.08.2018 submitted that the appointment of the Ombudsman was being deliberately delayed by the President due to his own 'conflict of interest'.

48. The Respondent no.1 reiterated that his suspension was made at the behest of interested parties i.e. by Mr. Rajan Manchanda who sought to gain by the suspension of the respondent no.1 as he took over as the Secretary of the appellant in order to ensure his prosecution and suspension and the filing of a memo of charge/ complaint before the Ombudsman .

49. The respondent no.1 further contended that the proposal of suspension of the respondent no.1 was seconded by one Mr.O. P. Sharma who stood to loose his membership of Board when the judgment of the Hon'ble Supreme Court was to be implemented as he is a sitting member of the Legislative Assembly and that the Hon'ble Supreme Court in its judgment dated 09.08.2018 had prohibited any person from being an Office Bearer of the Association (if he held a public office). Para-37 of the judgment of the Hon'ble Supreme Court was referred to by the respondent no.1 which reads to the effect that:

“37. In regard to disqualifications, we accept the clause in the draft constitution as proposed with the incidental modifications as suggested by the amicus. The disqualifications read as follows:

“Clause 6 (5)

A person shall be disqualified from being an Office Bearer, a member of the Governing Council or any Committee or a representative to the International Cricket Council or any similar organization if he or she:

- (a) is not a citizen of India;*
- (b) has attained the age of 70 years;*

- (c) *is declared to be insolvent, or of unsound mind;*
- (d) *is a Minister of Government Servant or holds a public office;*
- (e) *holds any office or post in a sports or athletic association or federation apart from cricket;*
- (f) *has been an Office Bearer of the BCCI for a cumulative period of 9 years or of a State association for a cumulative period of 9 years;*
- (g) *has been charged by a Court of Law for having committed any criminal offence i.e. an order framing charges has been passed by a Court of Law having competent jurisdiction.”*

50. It was further submitted on behalf of the respondent no.1 that the present appeal had emanated from an ad-interim injunction order and ought not to be taken up by this Court inasmuch as the application for stay under Order 39 Rule 1 & 2 of the CPC as filed by the respondent no.1 was still pending and that the appellant would have the right to argue on the same before the learned trial Court and any decision in the appeal would directly impinge on the adjudication of the said application, as the appellant had chosen not to file a reply.

51. The respondent no.1 further submitted that the orders of the learned trial Court were reasoned and speaking orders and were not liable to be interfered without the ad-interim stage and its finding are not perverse nor extraneous to the facts of the present case and that Appellant had not made out any strong prima facie case as to how the impugned order had caused any prejudice to the working and operation of the appellant.

52. As regards this submission of the respondent no. 1, in view of the factum that the impugned order dated 30.8.2018 qua the application (filed by the appellant herein) under Order 39 Rule 4 of the CPC, 1908, as amended, is an appealable order, in terms of order XLIII Rule 1 Sub Clause (r) of the CPC, 1908, as amended and as the appellant has sought redressal in relation thereto, it has been considered appropriate in the interest of justice to consider the appeal despite the submissions made on behalf of the respondent No.1.

53. Reliance was placed on behalf of the respondent no.1 on the verdict of the Hon'ble High Court of Mumbai in ***Mumbai Cricket Association, Bye-Laws, Rule 31(h) Vs. Ratnakar Shivram Shetty and Ors.*** 2014(2) Mh.L.J. to contend that in similar circumstances where the show-cause notice had merely been issued for the sake of punishment and was made just to complete the formality of giving an opportunity to impose the pre-determined penalty, by prejudging the alleged charges with no supply of material so used, no prior explanation having been sought, the Civil Court's powers were unlimited and that the principles of natural justice have to be followed by all entities inasmuch as whether it is a private body or/and public body when it comes to deciding and/or taking away the legal rights and the obligations or any member/person/representatives.

54. Specific reliance was placed on the observations in the cited verdict on para nos.34, 37 & 39 which read to the effect that:

““34. The question is not only that Respondent No.1/plaintiff never asked for details and/or opportunity even of personal

hearing, but the question is the decision taken by the Appellant based upon the material which they have collected privately and without disclosing it, based upon the same, issued the impugned show cause notice and insisted to produce contra material. This itself means, no explanation whatsoever was sought, based upon the material which they have collected as promised in the AGM. They relied upon the material as a foundation and straight away charged Respondent No.1 without even providing material which they collected unilaterally.

Admittedly, those materials were not available when the query was raised, neither there was any explanation provided on the date when the issue was raised. The Appellant just cannot extract the minutes/statement and recorded in the AGM, without referring to the earlier e-mails whereby Respondent No.1/plaintiff enquired about the incident. Admittedly, the incident was not in dispute. The justification, given after completing the unilateral inquiry and thereafter provided the explanation to the query so raised. The approach reflects the pre-determined mind of the Appellant the issue was raised in AGM itself. As there was no reply at the relevant time as insisted by the other members considering the transaction in question the probable named persons were those who were in the office. The quoted answer therefore, utilised against Respondent No.1/plaintiff and in the MC meeting itself in May 2013 they decided to impose penalty.

37. In the present facts and circumstances, the Court is required to go into the details of various facets of show cause notice as well as action so initiated based upon the material placed on record by both the parties, because the issue was also raised that the Court cannot grant ad interim relief, the effect of which is nothing less than granting decree as prayed

in the Suit. If case is made out, pending the Suit, the Court can pass mandatory order. In the present case, the learned trial Judge has granted the relief by partly allowing the Notice of Motion. The Appellate Court also required to consider, therefore, whether a case is made out to interfere with the reasoned order so passed on the foundation of material/evidence on record or not. By providing reasons, if ad interim relief and/or interim relief is granted and as there is no bar to pass such order, even though in a way it amounts to partly granting the decree. The additional reasons so provided by the Court, but based upon the material/documents available on record, just cannot be overlooked merely because the Court has passed the order by referring to various other documents as well as rules which, as contended, not argued and/or referred. The basic aspect in such matter always is that the Court if required to give reasons, based upon the material available which the Court thinks is proper to appreciate and/or evaluate, there is nothing wrong in it as it is nothing but to justify the order, interim and/or final, by providing appropriate reasons.

*39. In view of the above, the submission that Respondent No.1/plaintiff, after trial, may get compensation/damages as claimed in the Suit is unacceptable basically at the instance of the Appellant as the abrupt action and its effect and its consequences are far reaching not only as it affects only Respondent No.1/plaintiff, but also Gymkhana which nominated him apart from Appellant's own reputation itself. It is always legitimate acceptance of every member and basically the member of this type, that the MC though have a power, in view of the rule, still required to follow and/or the basic principle of natural justice, fair play and equity at every stage of the proceedings. The formality of completion of show cause notice itself was not sufficient. **The issue even if raised, in my***

view, needs to be tackled to avoid unnecessary publicity and/or affects the name and fame of everybody concern, specially when it is the requirement of the time that if certain issues are raised and/or pointed out, has to be tackled by inbuilt procedures, by giving opportunity to all concerned.

Such abrupt punishment as sought in the present case, is not the solution and specially it is not permissible mode to decide the issue.

Every body needs to follow the procedure, whether private body and/or public body, when it comes to deciding and/or taking away the legal rights and the obligations of any member/person/representatives. Therefore, in view of above reasons, I see there is no case made out to interfere with the order.” *(emphasis supplied)*

55. Reliance was also placed on behalf of the respondent no.1 on the verdict of Hon’ble Supreme Court in **Union of India Vs. Ashok Kumar Aggarwal** (2013) 16 SCC 147 to contend that suspension cannot be treated as a punishment, and it is essential to reproduce the suspension order which is undated as issued by the Appellant to the respondent no.1 which reads to the effect that:

“Whereas an Emergent Meeting of the Board of Directors of the Company- M/s Delhi & District Cricket Association Limited (DDCA) was called on 14 August, 2018 at 1600 Hours at Pashmina Hall Chambers, Taj Mansingh Hotel, New Delhi to discuss the following Agenda;

1. To take note of the Resolutions passed by Circulation by the Members of the Executive Committee essential for the smooth working of DDCA.

2. To take note of the Letters received by the Members of the Executive Committee from the Secretary of the Association and the Circular issued by the Secretary, DDCA. .
3. Any other Agenda, with the permission of the Chair,

The said Meeting was also duly attended by you- Shri Vinod Tihara.

That pursuant to the Emergent Meeting, the Board of DDCA was pleased to resolve that Shri Vinod Tihara, Secretary of the Association has prima facie indulged in anti-Company activities, grave act of indiscipline and gross misconduct and has indulged in levelling false allegations against the Board itself.

The Circular issued by Shri Vinod Tihara has the effect of bringing the cricketing activities to a standstill due to the hindrance created in proper and efficient functioning of the officials of DDCA resulting in the disruption of procurement activities and adversely jeopardizing the ensuing cricket season. The directions in the Circular issued by. Shri Vifiod Tihara are extremely detrimental to DDCA and the game of cricket and therefore immediate suspension is warranted.

Shri Vinod Tihara has also issued uncalled directions to Shri VK Bajaj, Accountant thereby putting roadblock to filing of urgent returns in accordance with law endangering DDCA from action by statutory authorities,

In view of the above, the Board while referring the matter to the Hon'ble Ombudsman along with the Complaint/ Statement of Charge has resolved to suspend Shri Vinod Tihara, Secretary from the Board pending inquiry in the

matter by the Hon'ble Ombudsman in terms of Rule 62 of the Articles of Association of the Company. He shall remain suspended till final outcome of the inquiry by the Hon'ble Ombudsman or till 6 months whichever is earlier,

In view of the above you - Shri Vinod Tihara is hereby suspended from the Board of Directors of the Company and all your powers and privileges as the Secretary of the Company shall also remain suspended accordingly.

You may submit your response to the Complaint/ Statement of Charge which is enclosed herewith directly to the Hon'ble Ombudsman for early completion of inquiry.

For and on behalf of the Board of Directors."

56. The extract of the Resolution of the meeting dated 14.08.2018 at 16:00 hrs whereby the respondent no.1 was suspended from the DDCA read to the effect :

"That a meeting of the Board of Directors of the Delhi and District Cricket Association Ltd. was held on 14" August 2018 and following resolutions were passed:

"RESOLVED THAT APPROVAL OF THE BOARD BE AND IS HEREBY ACCORDED, by majority of 11:3 that Shri Vinod Tihara is hereby suspended with immediate effect till pending inquiry which requires the adjudication by Ombudsman in terms of Clause 62 of the Articles of Association of the Company;

RESOLVED FURTHER that a copy of this Resolution and complaint shall be sent to the Ombudsman for conduct of Inquiry in accordance with the AOA;

RESOLVED FURTHER that all communications and instructions Issued by Mr. Vinod Tihara as well as the Office Circular dated 12.08.2018 are hereby quashed and all the members and the staff of the Company are directed to discharge their duties as per the directions of the Board and the officers appointed by the Company/ Committee In terms of Resolution dated ' 02.07.2018 and Circular Resolution dated 29.07,2018.

RESOLVED FURTHER that Shri Rajan Manchanda, Joint Secretary shall discharge the duties of the Secretary till further orders."

57. The complaint/ Statement of charge against the respondent no.1 made by the appellant/ DDCA dated 14.08.2018 reads to the effect that:

"On 12 August, 2018 an Office Circular was unilaterally issued by Shri Vinod Tihara, Secretary of the Company - M/s Delhi & District Cricket Association Limited (DDCA/ Company). The relevant portion of the Office Circular issued by Shri Vinod Tihara is extracted hereunder-

".....Accordingly, as a Secretary of the Association, I deem it proper to issue the following directions:

DIRECTION No.1:

(A) The Appointment of the CEO, COO, CFO & GM. is kept on hold 'till further orders.

(B) No contract, appointment letter, salary etc to be issued or released to such new Appointees as the same shall amount to be a contempt of the SC directives.

In the event of any violation of the above orders, strict disciplinary orders shall be initiated against the employee

concerned and may even be terminated for dereliction of orders.

DIRECTION No.2:

(A) In view of the specific SC Judgment, all Cricket Committees, Selection Committees are rendered non-est and scrapped forthwith.

(B) No DDCA employee shall entertain or issue any contract, letter or correspondence with regard to the above. In case of any violation of the directions, strict disciplinary action including termination may be taken against such employee.

DIRECTION No.3:

(A) Henceforth, no DDCA employee shall leave the DDCA premises or serve the Office bearers. Directors for their personal work or visit their personal offices or business locations in the event of any violation of this order, strict disciplinary action shall be initiated against such an employee.

(B) Henceforth, no DDCA employee shall take any orders on SMS, Email, verbal etc. from the personal employees of the office bearers, Directors. Any dereliction shall be a violation of service norms and hence shall invite strict action.

(C) Henceforth, all employees shall be bound to serve DDCA from the DDCA premises alone. All Board Meetings, Committee meetings shall be held at DDCA premises alone. No additional costs shall be incurred on TA, DA, Hotel costs etc. by the DDCA.

It is clear that the contents of the above Circular issued by Shri Vinod Tihara amounts to indiscipline and gross misconduct. It is pertinent to note that the directions issued by Shri Vinod Tihara in his above Circular falls within the exclusive domain of the Board of Directors and their collective wisdom; exercising of any such power by

any member of the Board lest the Secretary is against spirit of the powers entrusted upon the Board by the Articles of Association; The actions of Sh. Vinod Tihara are directly in conflict with Clause 48 of the Articles of Association of the Company as he was never authorized by the Board to issue any such circular or assume any such powers. Further, Shri Vinod Tihara was privy to all the decisions taken by the Executive Committee members in majority, he was part of the meeting dated 02th July 2018 wherein decisions were passed unanimously and had even signed the Circular Resolution dated 29th July 2018 wherein decisions taken on 2th July 2018 and subsequent actions were reinforced and reaffirmed by Shri Vinod Tihara as well. The Board is of the opinion that Shri Vinod Tihara in an unauthorized manner has usurped the jurisdiction of the Board of Directors.

The Board is of the opinion that the directives issued .by Shri Vinod Tihara have brought the working of DDCA to a standstill. Pursuant to the Circular Issued by Shri Vinod Tihara, the day to day affairs have come to a standstill as Shri Vinod Tihara in his Circular has unilaterally directed the staff members of DDCA not to follow the directions issued by the Board and Its members. The Board is also of the prima facie opinion that Shri Vinod Tihara has also issued uncalled directions to Shri VK Bajaj, Independent OA handling Accounts of DPCA thereby putting roadblock to filing of urgent returns in accordance with law endangering DDCA from action by statutory authorities.

The Board is of the opinion that the Circular issued by Shri Vinod Tihara has the effect of bringing the cricketing activities to a standstill due to the hindrance created in proper and efficient functioning of the officials of DDCA

resulting in the disruption of procurement activities and adversely jeopardizing the ensuing cricket season. The directions in the Circular issued by Shri Vinod Tihara are extremely detrimental to DDCA and the game of cricket. Shri Vinod Tihara in an utmost unjust and unparliamentarily manner has defied the Resolution passed by the Board and has gone onto level unfounded allegations against the Board itself.

The Board is of the prima facie opinion that actions of Sh. Vinod Tihara in defying the mandate of the Board and writing letter and issuing Circulars in the teeth of the Resolutions passed by the Board amounts to an act of indiscipline, misconduct and the said conduct is detrimental to the interest of DDCA and general administration of its affairs and also to the game of cricket.

Mr. Vinod Tihara, Secretary has also circulated mail dated 10th August 2018 levelling certain allegations against the members of the Board. The Learned Secretary has levelled allegations such as that the meeting of 2th July, 2018 Is no meeting at all and that the President is deliberately delaying appointment of Ombudsman etc. which are untrue. Mr. Tihara has made allegations not only against the President but against all the office bearers as he stated that "You have been calling Directors over Tea / Coffee and taking their signatures on paper". By these acts he has levelled personal and uncalled remarks against the members of the Board. It may be noted that he was also present in all the meetings where due deliberations and discussions were held and thereafter the documents were executed and signed. He himself has signed the Circular Resolution containing all the details. By these words he is defaming not only the President but ail the Board members and trie Association itself.

Further, Mr. Tihara during the course of the meeting dated 14th August 2018 while raising his voice said that "he wants that he shall be consulted in ail the matters of DDCA and he requires unfettered powers. He said that he has made various commitments while seeking votes during the election and now has to fulfil the same." To quote he said "maine vote lene ke liye logon se bahut commitments karen hain aur main ab unki madad nahi kar pa raha". It appears that the sole motive of Mr. Vinod Tihara is to extend undue favours to certain individuals for his personal gains and not to work for the interest of the DDCA or the game of cricket.

That further, during the course of the meeting dated 14th August 2018 Mr. Vinod Tihara in a threatening manner said that if any action is taken against him he shall not allow the DDCA to function, he said "agar mere khilaf kuch kiya toh main DDCA nahi chalne doonga, agar DDCA chalana hai toh main jo kema chahta hoon mujhe kerne do". He further used unparliamentary language and intimidated the members of the Board by his unruly behavior. Members were annoyed with such statement of the Secretary and stated that such behavior is totally unacceptable, Mr. Tihara has totally exceeded his limits and that it is impossible to function with a colleague with this kind of attitude and temperament.

Accordingly, appropriate action ought to be taken against Shri Vinod Tihara for exceeding the powers vested in him by issuing the unauthorized directions which are detrimental to the interest of DDCA and affects the reputation and integrity of DDCA and the elected Executive Committee members of DDCA.

We therefore request the Hon'ble Ombudsman to look into the present Complaint filed against Shri Vinod Tihara by the Board of Directors of the Company.

The Order of Suspension in terms of Rule 62 (ii) (d) of the Article of Association of the Company passed by the Board of Directors of the Company alongwith the draft Minutes of the Meeting is enclosed herewith for your perusal.

In view of the urgency involved in the matter, we are submitting the present Complaint /Statement of Charge alongwith the Suspension Letter. The detailed Charge Sheet alongwith the documents and the list of witnesses will be submitted to the Hon'ble Ombudsman at the earliest."

ANALYSIS

58. On a consideration of the rival submissions made on behalf of either side, it is apparent that in terms of Article 62 of the Articles of the Delhi & District Cricket Association i.e. the Appellant, there is a specifically provided procedure of dispute resolution of an Ombudsman and the disputes that fall within the ambit of the Ombudsman are prescribed in Section 62 of the said Association are:-

- a. Member, Association & Franchisee Disputes.*
- b. Detriment caused by Member or Administrator by an act of indiscipline to misconduct which is detrimental to the interest of the Company and game of cricket*
- c. Misconduct or breach by any player, umpire, Team official, Selector or any other person associated with the Company.*
- d. By the Public against the Company: Where a member of the public is aggrieved concerning ticketing and access and*

facilities at stadia, the same may be brought in the form of a complaint to the Ombudsman .

59. In terms of Article 62 (ii)(a), the decision of the Ombudsman is made final and binding and is to come into force forthwith on being announced and delivered. The appellant falls within the category of Article 62(i) as being the Association and the respondent no.1 being the Secretary of the Association would also *prima facie* fall within the ambit of Article 62(i)(a) of the Articles of Association. The suspension of the Respondent no.1 by the Appellant on 14.08.2018 without having first referred the matter to the Ombudsman for an inquiry has rightly been held by the learned Trial Court vide the impugned orders to be *de hors* the ambit of Article 62(ii)(d) of the Articles of Association of the appellant which reads to the effect:-

*“d. **Pending** inquiry and proceeding into complaints or charges of misconduct or any act of indiscipline or violation of any Rules and Regulations, the concerned Member, Administrator, Player, Match Official, Team Official, or other individual associated with the Company (along with their respective privileges and benefits) may be suspended by the Board of Directors until final adjudication. However, the said adjudication ought to be completed within six months, failing which the suspension shall cease.”*

60. The contention of the Appellant is to the effect that vide the suspension order which is actually undated and presumably dated 14.08.2018, there had been a simultaneous suspension of the respondent no.1 whilst referring the matter to the Ombudsman and that the same would suffice to meet the requirements of Article

62(ii)(d) of the Articles of Association of the Appellant inasmuch as vide the said suspension order, it was mentioned as under:-

“In view of the above, the Board while referring the matter to the Hon'ble Ombudsman alongwith the Complaint/ Statement of Charge has resolved to suspend Shri Vinod Tihara, Secretary from the Board pending inquiry in the matter by the Hon'ble Ombudsman in terms of Rule 62 of the Articles of Association of the Company. He shall remain suspended till final outcome of the inquiry by the Hon'ble Ombudsman or till 6 months whichever is earlier,

In view of the above you - Shri Vinod Tihara is hereby suspended from the Board of Directors of the Company and all your powers and privileges as the Secretary of the Company shall also remain suspended accordingly. You may submit your response to the Complaint/ Statement of Charge which is enclosed herewith directly to the Hon'ble Ombudsman for early completion of inquiry”,

cannot be accepted as Article 62(ii)(d) of the Articles of Association of the appellant postulates an already pending inquiry or proceeding and complaints or charges of misconduct or any act of indiscipline or violation of any Rules and Regulations by any Board Member, Player, Match Official, Team Official and other individual associated with the company for invocation of the powers of suspension of the Board of Directors at the final adjudication.

61. Though, during the course of submissions made on behalf of the Respondent No.1 it was contended that there is no Ombudsman appointed so far and it was submitted on behalf of the Appellant that the Ombudsman had already been appointed on 02.07.2018, it is

however, *prima facie* apparent from the record that there was no pending inquiry or proceeding against the Respondent no.1 from the date 02.07.2018 till the suspension of the Respondent no.1 on 14.08.2018 and rather the e-mail of the Ombudsman with the e-mail address **Ombudsman @ddca.co** is dated 30.08.2018 issued on 5:20:22 PM to the Respondent no.1 on a receipt of complaint dated 14.08.2018 against him from Mr. Rajan Manchanda, Joint, Secretary of the Appellant and others on behalf of the Delhi & District Cricket Association with copy of extracts of the resolutions of the Board of Meeting of the Delhi & District Cricket Association held on 14.08.2018 and a copy of the suspension order having been attached and the Respondent no.1 was called upon to give a response to the same within a period of two weeks.

62. The written submissions and documents produced on behalf of either side indicate that apart from the suspension of the respondent no.1 by the appellant on 14.08.2018, the respondent no.1 too issued the circular dated 12.08.2018 which has already been adverted to despite the respondent no. 1, having signed the Circular Resolution dated 29.07.2018.

63. Apparently, for the kind of disputes qua which the office circular dated 12.08.2018 was issued by the respondent no.1 and qua which the suspension order was passed by the appellant on 14.08.2018, Article 62 of the Articles of Association of the appellant provides for a mode of dispute resolution which has essentially to be adhered to by both the Appellant and the Respondent no.1 for maintenance of the dignity of the game of cricket. The Memorandum

of Association of the Board of Control for Cricket in India i.e. the respondent no.2 to which the appellant is affiliated is approved by the Hon'ble Supreme Court as indicated vide its verdict dated 09.08.2018. The same too provides for an Ombudsman for dispute resolution in terms of Chapter IX thereto through Article 40 of the same and in terms of Article 41 of the Articles of the Memorandum of Association of the Board of Control for Cricket in India i.e. the respondent no.2, in terms of Article 41(1)(a) thereof;- any disputes between or among the Board of Control for Cricket in India, its Members, IPL Franchisees, Zones and the Cricket Players' Association are to be **automatically** to be referred to the Ombudsman with the procedure prescribed of being that both the parties would submit their arguments and a hearing would be conducted following the principles of natural justice and exercising all powers of inquiry and hearing as the Ombudsman deems fit before appropriate orders are passed.

64. Significantly, in terms of Article 41(6) of the Memorandum of Association of the Board of Control for Cricket in India i.e. the respondent No.2 herein , the identical Article as Article 62(ii)(d) of the Articles of Association of the appellant is prescribed except that the word '**Company**' in Article 62(ii)(d) is replaced by the word '**Board of Control for Cricket in India**' and that the word '**Board of Directors**' in Article 62(ii) of the Articles of Association of the Respondent no.1 is changed to '**Apex Council**' qua the Articles of Memorandum of Association of the respondent no.2 and apparently thus, the same principles would have to apply to suspensions made of

Members, Administrator, Players, Match Officials, Team Officials of the Appellant of which Respondent no.1 is its elected Secretary.

65. It is apparent thus, that disputes in the matter between the Appellant and the Respondent no.1 need necessarily to be adjudicated upon by the learned Ombudsman , i.e., the respondent no.3 who has already entered into the reference vide issuance of an *e-mail* referred to hereinabove dated 30.08.2018 to the respondent no.1.

66. Thus in view of the Articles of Association of the Appellant herein,i.e., the Delhi & District Cricket Association and the present Articles of Association of Delhi & District Cricket Association & Article 62(ii)(d) and Article 41 of the Memorandum of Association of the Board of Control for Cricket in India already approved by the Hon'ble Supreme Court as indicated vide verdict dated 09.08.2018, the dispute resolution mechanism has undoubtedly *prima facie* to be through the operation of the Ombudsman seized of the same and to who in terms of Article 41(1)(a) of the Memorandum of Association of the Respondent No.2 of the Constitution, the disputes as under Article 41 of the Memorandum of Association of the BCCI are to be automatically referred to the Ombudsman.

67. As regards the contention of the Appellant that the relief sought by the Respondent no.1 as sought through the suit CS No.5963/18 could not be granted in view of Companies Act, 2013, it is apparent that the provisions of Section 430 of the Companies Act, 2013 are *prima facie* not an embargo to the invocation of the jurisdiction of the Civil Court in terms of Section 9 of the CPC, 1908, as amended, for as held in *Mumbai Cricket Association Bye-laws Rule 31(r) (supra)*,

vide para 30 thereof the powers of the Civil Court are unlimited especially where the aspect of a formality of show cause notice is to be tested. The observations in paragraphs 30, 31, 32 of the said verdict are relevant and germane and read to the effect:

““30 Strikingly, we are dealing with legal rights between two private parties, as sought to be contended by the learned senior counsel appearing for the Appellant also, as Respondent No.1/plaintiff, in his individual capacity, has challenged the action of MCA. It is relevant to note that Civil court's jurisdiction, in a situation like this, in no way curtail merely because one party is a private body and the dispute is against its member. The writ jurisdiction, power and/or public interest litigation, court's power has various other facets apart from superior court's power to pass appropriate order on the basis of material available on record, but when it comes to deciding the disputed question of facts and civil rights between the two parties, the Civil Court's power, in my view, is also unlimited. If case is made out, the Court is empowered to pass order within the frame work of law.

31 The Court, therefore, required to consider action and/or inaction of one private party against the another affected and/or aggrieved party, whether it is a private body and/or public body 22 907-aost-25497-13 with caast-25580-13 - 23-9.sxw and/or two individuals. The concept "in accordance with law", therefore, definitely take care of basic elements

revolving around the principles of natural justice, fair play and equity.

32 Merely because in view of rule 31(h), the unanimous decision is taken by the majority and in view of the managing committee's opinion, a case is made out to impose such penalty, this itself means that the other side is entitled to raise objection to such unilateral opinion so formed. The formality of show cause notice, and its related aspects, therefore, required to be tested and can be tested in court of law when it takes away and/or affects the civil rights.”

68. As observed hereinabove, it is only after the matter had been referred to the Ombudsman in terms of Article 62 of the Articles of Association of the Appellant that the inquiry or proceeding in relation to any complaint against the respondent no.1 could have been initiated and for initiation thereof the powers of suspension in terms of Articles 62(ii)(d) of the Articles of Association of the Appellant may have been contemplated to be invoked, but not before any such reference to the Ombudsman.

CONCLUSION

69. It is apparent thus, that there is no infirmity in the impugned orders dated 28.08.2018 & 30.08.2018 of the learned Additional District Judge-06, Central in CS No. 5963/18, whereby an ex-parte interim restraint was granted against the appellant herein and which ex-parte restraint was not vacated vide order dated 30.08.2018.

70. However, without any observations on the merits or demerits of the proceedings which are already pending for adjudication before the learned Trial Court and are also before the Ombudsman, taking into account the circular dated 12.08.2018 issued by the Respondent no.1, which appears to be the cause of suspension of the Respondent no.1 by the Appellant, and the contention of the appellant that such a circular brings the activities of the Delhi & District Cricket Association to a stand still and could not have been issued and was *ultra vires* his duties conferred as per the Memorandum of Association of the Board of Control for Cricket in India as applicable to the Delhi & District Cricket Association, the impugned orders dated 28.08.2018 & 30.08.2018 of the learned Trial Court are modified to the extent that the operation of the suspension order of the Respondent No.1 purportedly dated 14.08.2018 as issued by the Delhi & District Cricket Association and its Board of Directors i.e. the appellant herein, is stayed till the decision on the interim application under Order XXXIX Rules 1 & 2 of the Code of the Civil Procedure, 1908 on merits, and furthermore, the Respondent No.1 the Delhi & District Cricket Association is restrained from obstructing the Respondent no.1 in discharge of his duties and functions as Secretary, Delhi & District Cricket Association to the extent that he functions in accordance with the Articles of Association of the Delhi & District Cricket Association till adjudication of the application under Order XXXIX Rules 1 & 2 of the CPC before the learned Trial Court or till adjudication by the learned Ombudsman in terms of Article 62 of the Articles of Association of the Delhi & District Cricket Association,

i.e., the appellant, of the reference made on 14.8.2018 to the learned Ombudsman of the complaint against the Respondent No.1, whichever is before.

71. The appeal FAO 413/2018 and its accompanying applications are disposed of accordingly.

72. Copy of this judgment be given *dasti* under the signatures of the Court Master to either side, as prayed.

ANU MALHOTRA, J

SEPTEMBER 20th, 2018
SV/MK/VM/NC

न्यायमेव जयते