

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (ST.) NO. 3521 OF 2019
WITH
CIVIL APPLICATION (ST.) NO. 3522 OF 2019
IN
APPEAL FROM ORDER (ST.) NO. 3521 OF 2019**

Matunga Gymkhana

....Appellant

V/s.

Sandeep P. Kishnani & Ors.

....Respondents

Mr. P.S. Dani, Sr. Advocate a/w. Murari Madekar and Sachin Kudalkar i/b. Madekar & Co. for the appellant.

Mr. Gauraj Shah i/b. Kanga & Co. for R.Nos.1 and 2.

Mr. Ramchandran N. i/b. Narayanan & Narayanan for R.No.5.

Mr. V.A. Kapse a/w. Mr. Upendra Mahadik i/b. Fast Track Legal for R.No.11.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 06th FEBRUARY, 2019.**

JUDGMENT:

With consent heard finally at the stage of admission.

2. The appellant herein has assailed the order dated 16/01/2019 in Notice of Motion No.4465/2018 in Suit No.3087 of 2018, City Civil Court, Bombay. By the impugned order the learned Judge had stayed the effect and implementation of the decision of cancelation of the Plaintiffs' membership of Defendant No.1-Matunga Gymkhana, as communicated by letter dated 12th November 2018.

3. The respondents are the plaintiffs in the suit whereas the appellant is the defendant and shall be hereinafter referred to as 'the plaintiffs' and 'the defendants' respectively.

4. The plaintiff no.1 was enrolled as a member of the defendant No.1- Gymkhana pursuant to the application filed by his grandfather, who is a life member of the defendant No.1-Gymkhana. The membership of the plaintiff no.1 was cancelled on 30/10/2018 mainly on the ground that the grandfather of the plaintiff no.1 had got him enrolled as a member by misrepresenting that the plaintiff no.1 was his son. The plaintiff filed a suit challenging cancellation of his membership and by way of interim relief sought to stay the effect and implementation of the decision i.e. cancellation of his membership.

5. The learned Judge has granted the interim relief and stayed the effect and implementation of the decision taken by the defendant-Gymkhana to cancel the membership of the plaintiff, mainly on the ground of breach of principles of natural justice, delay in taking action and further holding that the plaintiff no.1 cannot be compensated in terms of money.

6. Relying upon the decisions in *T.P. Daver v/s. Lodge Victoria [AIR 1963 SC 1144]* and *Royal Western India Turf Club Ltd. and Ors. v/s. Vinayak J. Gaekwad and Ors. [2006(6) Mh.L.J.665]*, Mr. P.S. Dani, learned senior counsel for the defendant-gymkhana submits that the Civil Court would have no jurisdiction to review the decisions of the Defendant No.-Gymkhana, unless the action is without jurisdiction, or is in breach of principles of natural justice or the order/action is malafide or is in bad faith.

7. Mr. P.S. Dani, learned senior counsel submits that the plaintiff no.1 was enrolled as a member on the basis of false information and hence in accordance with clause 2 of Chapter V of the Constitution, the defendant no.1-gymkhana was competent to cancel his membership. He submits that an unanimous resolution to cancel the membership of the plaintiff was taken after issuing show cause notice to the plaintiff No.1 and his grandfather and after giving them a reasonable opportunity of being heard. This decision was informed to the plaintiff no.1 vide letter dated 12/11/2018.

8. The learned senior counsel Mr. Dani further submits that the defendant-club had learnt about the said false and incorrect

information only after receipt of the KYM form dated 18/07/2018. He, therefore, contends that there was no delay in initiating action against the plaintiff. The learned counsel for the plaintiff submits that action against the plaintiff no.1 has been taken as per the provisions contained in its constitution, after complying with the principles of natural justice. He, therefore, contends that the Trial Court was not justified in interfering with the decision of the defendant-club.

9. Mr. Gauraj Shah, learned counsel for the plaintiffs submits that the defendant-Gymkhana was in need of funds. The then Managing Committee had told Chandiram Kishnani that the defendant - Gymkhana would shortly open membership to blood relatives to grand children of existing members and as such he could make an application to enroll the plaintiff no.1 as a member. He submits that the application for membership of the plaintiff no.1 was proposed and seconded by the then existing members of the defendant no.1 - Gymkhana. The plaintiff no.1 was enrolled as a member and continued to be a member for a period of 22 years. The plaintiff had also furnished all the relevant information alongwith the documents to the defendant no.1 in the year 2003 and 2010. He submits that after a lapse of 22 years, the defendant no.1, by notice dated 15/09/2018, for

the first time, called upon the grand father of the plaintiff to establish his relationship with the plaintiff no.1 and by notice dated 15/10/2018, called upon the plaintiff no.1 and his grandfather to show cause as to why the membership of the plaintiff no.1 should not be cancelled. He submits that the plaintiff no.1 was not enrolled as a member on the basis of false information by his grandfather. He contends that issuance of show cause notice was only an eye wash and that the decision to cancel the membership of the plaintiff no.1 was already taken in a resolution passed in a meeting held on 15/10/2018.

10. The learned counsel for the plaintiff further submits that the defendant no.1-Gymkhana by letter dated 30/10/2018 had informed the plaintiff no.1 that the managing committee would consider and take appropriate action under Chapter 5 of the Constitution and in accordance with the rules and regulations of the Gymkhana. He submits that the plaintiff no.1 was not given any opportunity to show cause to the said letter dated 30/10/2018. He submits that the action of the defendant no.1 is in breach of principles of natural justice.

11. The learned counsel for the plaintiff further contends that in view of the scheme introduced on 28th April, 1996, the plaintiff no.1, being

the grandson of a life member, was entitled to be enrolled as a member. He submits that the error, if any, in the previous application had been rectified by the grandfather of the plaintiff no.1 by filing an application to enroll the plaintiff no.1 as a member of the Gymkhana as per the amended scheme. He submits that the appellant – Gymkhana has not taken any decision on the said application. He further submits that the plaintiff no.1 had been enjoying the facilities of the club since last 22 years, and hence the learned trial Judge was justified in restoring the status quo existing prior to the cancellation of the membership.

12. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

13. At the outset it may be mentioned that in *T.P. Devar (supra)* the Apex Court has observed that the source of the power of associations like clubs and lodges to expel their members is the contract on the basis of which they become members. The Apex Court has further observed that this contractual origin of rule of expulsion has its corollary in the cognate rule that in expelling a member the conditions laid down in the rules must be strictly complied with. It is further

observed that a jurisdiction of a civil court to interfere with the decision of such associations is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice. These principles have been reiterated in a *Royal Western India Turf Club Ltd. (supra)* .

14. In the instant case, it is not in dispute that Prakash Kishnani and Chandiram Kishnani, the father and grandfather of the plaintiff no.1, were the life members of the defendant no.1 - Gymkhana. On 04/12/1995, the Managing Committee of the defendant no.1-Gymkhana passed a resolution and introduced 'one son membership' scheme. Under the said scheme, a life member could enroll his one son as a member of the defendant no.1-Gymkhana. It is not in dispute that Prakash Kishnani had by an application dated 11.03.1996 availed the benefit of the said scheme by enrolling his son Nikhil as a member of the Defendant No.1-Gymkhana. Having availed the benefit of the scheme for his son Nikhil, Prakash Kishnani was not competent to seek such benefit for the plaintiff no.1.

15. The records indicate that on the same date i.e. 11.03.1996, Chandiram Kishnani, the grandfather of the plaintiff No.1 had filed an application for enrollment of the plaintiff no.1 as a member of defendant no.1-Gymkhana. The application /membership form no. 1133, was signed by Chandiram Kishnani. He had sought enrollment of the Plaintiff No.1 by stating his name to be 'Sandeep Chandiram Rohra, son of Chandiram K. Rohra'.

16. It is not in dispute that as on 11.03.1996, the blood relatives / grand children of the existing members were not entitled to be enrolled as members of the Gymkhana. The scheme to enroll blood relatives was introduced only on 28/04/1996 and as such, Mr. Chandiram Kishnani could not have enrolled the plaintiff as a member as on 11/04/1996. The averments in para 12(A) and 24 of the plaint that Chandiram Kishnani had applied for membership on 11th March, 1996 as per the prevailing scheme for grant of membership to the blood relatives/ grand children are factually incorrect. The contention that the application made as per the advice of the then managing committee was not raised in reply to show cause notice and is not supported by any other material.

17. A perusal of the application dated 11/4/1996 prima facie indicates that Chandiram Kishnani had sought enrollment of the plaintiff no.1 as a member of Defendant No.1-Gymkhana by stating that the plaintiff no.1 was his son. The records thus prima facie indicate that Chandiram Kishnani, the grandfather of the plaintiff No.1 had availed the benefit of the scheme dated 11/3/1996 in enrolling the plaintiff No.1 as a member on the basis of false or incorrect statement.

18. It may be mentioned that Clause (2) of the Chapter V of the constitution of the defendant Gymkhana authorizes the Managing Committee to cancel the membership of any candidate admitted as a member on being satisfied that any statement/particulars contained in the application for membership were incorrect. The Managing Committee of the defendant-Gymkhana was competent to cancel the membership of the plaintiff No.1 by virtue of powers under clause (2) of Chapter V of the Constitution of the Gymkhana.

19. The records reveal that before invoking the powers under clause (2) of Chapter V of the Constitution, the defendant-Gymkhana, by notice dated 15/9/2018 had brought to the notice of Chandiram Kishnani that he had submitted the membership application form

11/3/1996 for his son Sandeep C. Rohra, whereas the documents furnished by the plaintiff No.1 under KYC showed the name of the plaintiff as Sandip P. Kishnani, son of Prakash Kishnani. The defendant-Gymkhana therefore called upon said Chandiram Kishnani to establish his relationship with Sandip Rohra (Kishnani). The defendant no.1 Gymkhana had also permitted Chandiram Kishnani to inspect/peruse the membership application form dated 11.3.1996. Subsequently the defendant no.1 Gymkhana issued notice dated 15th October, 2018 to the plaintiff no.1 and his grandfather stating that the Chandiram Kishnani had got the plaintiff no.1 enrolled as a member by falsely stating that he was his son. They were called upon to show cause as to why the membership of the plaintiff no.1 should not be cancelled under Clause (2) of Chapter V of the Constitution. The plaintiff no.1 and his grandfather Chandiram Kishnani were also given an opportunity of personal hearing and to make a personal representation. In the reply to the notice said Chandiram Kishani admitted that the plaintiff no.1 is the son of Prakash Kishnani. He claimed that he had signed the application as the grandfather of the plaintiff no.1. He also admitted having made corrections in the membership form. He further stated that as per the scheme introduced on 28th April, 1996 he was entitled to enrol his grandson as

a member and that in case he had committed any wrong, the same could have been regularized/rectified.

20. The plaintiff no.1 did not file any separate reply to he show cause notice but relied upon the reply filed by his grandfather Chandiram Kishnani. By letter dated 30th October, 2018 the defendant no.1 Gymkhana informed the plaintiff no.1 as well as his grandfather Chandiram Kishnana that as per the scheme introduced on 4th December, 1995 only one son of a life member could be enrolled as a member. They were informed that Chandiram Kishnani had got his grandson i.e. the plaintiff no.1 enrolled as a member by falsely stating that the plaintiff no.1 was his son. They were further informed that the explanation given by them was not acceptable and that the managing Committee would take appropriate action under Chapter V of the Constitution and Rules and Regulations of the Gymkhana. On the same date, i.e. 30/10/2018 the Managing Committee of the defendant no.1 Gymkhana took a resolution to cancel the membership of the plaintiff no.1 and communicated this decision to the plaintiff no.1 by letter dated 12.11.2018. The records thus indicate that the plaintiff was given ample opportunity of putting forth his case. The decision taken by the Managing Committee is therefore not violative of

principles of natural justice. Prima facie there is no merit in the contention that the decision to cancel the membership was taken on 15/10/2018 and further that the issuance of show cause notice was only an eye wash. There is not prima facie material to indicate that the action is malafide or in bad faith.

21. The defendant had claimed that it had learnt about the false information while collating the KYM form dated 11.9.2017 of the plaintiff no.1 with the application form no.1133 dated 11.3.1996. Immediately thereafter they had called upon Chandiram Kishnani to establish his relationship with the plaintiff no.1. Said Chandiram Kishnani did not file any reply and hence in a meeting held on 11.10.1918, based on KYM findings, it was decided to invoke clause 2 of Chapter V of the Constitution of defendant no.1. In the light of above, the action of the defendant no.1 could not have been interfered with on the ground of delay.

22. For the reasons stated above, the plaintiff No.1 has failed to establish prima facie case to justify grant of an injunction. The balance of convenience is not in his favour. The plaintiff having sought damages, it cannot be said that the plaintiff cannot be compensated in

terms of money. The learned Judge has therefore erred in granting the injunction and thereby permitting the plaintiff No.1 to continue as the member of the Gymkhana.

23. In the circumstances, the appeal is allowed. The impugned order is set aside. Suffice it to say that this order should not be construed as an expression on merits of the matter. The trial court to decide the suit on the basis of the evidence that would be led by the respective parties.

24. At this stage, the learned counsel for the plaintiff submits that the defendant -Gymkhana has not taken the decision on the application dated 4/9/1996, for enrollment of the plaintiff as a member as per the scheme introduced/amended on 28/4/1996. The plaintiff had been enjoying facilities of Gymkhana for over a period of 22 years. His membership has been cancelled without taking any decision on the application dated 4/9/1996. Considering this fact, the defendant No.1-Gymkhana to consider the said application and take appropriate and expeditious decision on the same.

(SMT. ANUJA PRABHUDESSAI, J.)