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

**APPEAL FROM ORDER ST. NO. 15087 OF 2019
WITH
CIVIL APPLICATION ST. NO. 15088 OF 2019
IN
APPEAL FROM ORDER ST. NO. 15087 OF 2019**

Swimming Federation of India & anr. ..Appellants/Applicants
(Org.Deft.Nos.1 & 2)

vs.

Maharashtra State Amateur Aquatic
Association & ors. ..Respondents
(org.plff. & deft.Nos.3 to 9)

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Shri Mayur Khandeparkar I/b. Shri Dipen Siroya for
appellants/applicants.
Shri R.M. Nakhwa I/b. Shri S.S. Jinsiwale for respondents.

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CORAM : M.S.KARNIK, J.

DATE : 4th JUNE, 2019

P.C. :

Heard learned Counsel for the parties.

2. By this Appeal, the appellants – original defendant
Nos. 1 and 2 have assailed the order dated 17th May, 2019
passed by the Judge, City Civil Court for Greater Mumbai. The
said order is passed in the Notice of Motion No. 3415 of 2017

taken out by the plaintiff – present respondent No.1. The Trial Court was pleased to grant ad-interim relief in terms of the prayer Clause (a) which reads thus :

“(a) Pending the hearing and final disposal of the suit this honorable court be pleased to pass a mandatory order directing the Defendant No.1 to accept the entries sent by the Plaintiff to represent the Maharashtra State Amateur Aquatic Association.”

3. It is contended by learned Counsel for the appellants that respondent No.1 was affiliated to the appellant No.1. Learned Counsel for the appellants invited my attention to the Constitution and Memorandum of Association of the appellant No.1 which is at page 323 of the paper-book. Relying on various clauses as mentioned in the Constitution, learned Counsel for appellants would contend that respondent No.1 has committed breach of the various terms and conditions which are incorporated in the said Constitution and Memorandum of Association. Action of suspension and consequent disaffiliation was taken by the appellant No.1 against respondent No.1.

4. Learned Counsel would submit that respondent No.1 did not hold the elections as required under the Constitution.

Even after assuring the appellant that respondent No.1 would conduct the elections, respondent No.1 failed to abide by the assurance given. In these circumstances, the appellant No.1 was constrained to appoint an ad-hoc body to manage affairs of respondent No.1.

5. Learned Counsel invited my attention to the Plaint filed on behalf of respondent No.1. He would contend that the relief which has been granted is much beyond the pleadings in the Plaint. According to him, the suit was filed at the stage when there was only an order of suspension. Later on, after following the procedure laid down respondent No.1 was disaffiliated. He would submit that the order of disaffiliation has not been challenged nor is the Plaint amended. In the absence of challenge to the order of disaffiliation, the relief could not have been granted by the trial Court. He would moreover submit that now, instead of respondent No.1, the appellant No.1 has recognized Swimming Association of Maharashtra (SAM) by granting it affiliation. Without making SAM as a party the

application for grant of any interim relief could not have been entertained. He would further submit that the Memorandum of Association provides for arbitration in case there is a dispute.

6. Learned Counsel thus would submit that respondent No.1 having acted completely in breach of the Constitution and the Memorandum of Association under which the affiliation was originally granted to respondent No.1, no interim relief could have been granted till order of suspension or disaffiliation is set aside. He would thus submit that while granting the interim relief the trial Court has virtually granted a final relief.

7. Learned Counsel for respondent No.1 on the other hand invited my attention to the order dated 22nd May, 2018 passed on earlier occasion in the suit and also to the impugned order dated 17th May, 2019. He would submit that when order of suspension of respondent No.1 came to be issued, the respondent No.1 had approached the trial Court for granting ad-interim reliefs. The trial Court for elaborate reasons recorded in

the order dated 22nd May, 2018 had allowed respondent No.1 to participate in the event which was then organised. He would further submit that the Appeal from Order against the order dated 22nd May, 2018 passed by the trial Court is pending in this Court and no interim reliefs have been granted. Further he would submit that no notice was issued before taking the drastic action of disaffiliation of respondent No.1. According to him, the notice has been issued to the erstwhile President of respondent No.1 – Association and not to respondent No.1. He submitted that in any case, in the matters involving sports activities, it would not be in the interest of justice to disallow participation to compete at the National level.

8. Having heard learned Counsel for the parties, I am of the opinion that the order impugned does not calls for any interference. I have gone through the order dated 22nd May, 2018 passed by the trial Court on an earlier occasion. In paragraph 19 of the said order the trial Court has observed thus :-

“19. In the instant case, as stated earlier, at this stage, there is nothing on record to show any act of guilt so as to suspend the organisation. No conclusion of guilt is recorded. No opportunity of hearing is provided to the delinquent organisation. In such circumstances, at this stage, I do not find prima facie case on the part of the defendant no.1 to suspend the affiliation of MSAAA and to appoint ad-hoc body.”

Further in paragraph 26 it is observed thus :-

“26. The defendant no.1 is however directed to hold the entire event of trial, which was to be organized by plaintiff, by following proper and fair procedure and to see that no inconvenience and injustice is caused to any of the participants. After all, the objects of both, the plaintiff and the defendant No.1 is to promote swimming activities in India. When this court informed the parties about the interim arrangements in the above said manner, the learned Counsel for the plaintiff insisted for allowing their at least two representatives as observers for the trial. I found the request quite reasonable. Had the defendant no.1 not announced their taking over of the trial event by suspending affiliation of MSAAA, the plaintiff body, at this stage, being on the record of the Charity Commissioner's office, would have authority to organise the event.”

As the circumstances necessitated, the trial Court then was pleased to grant ad-interim relief in terms of prayer Clause (b) which reads thus :

“(b) Pending the hearing and final disposal of the suit this honorable court be pleased to pass a mandatory order directing the Defendant No.1 to treat the Plaintiff as the authorized entity to represent Maharashtra State Amateur Aquatic Association.”

9. Thereafter Notice of Motion was again moved as the appellants refused to accept the entries of the respondent Nos. 3 to 8 to represent respondent No.1 – Maharashtra State Amateur Aquatic Association. The Swimming Championship is to be conducted on 26th June, 2019 to 30th June, 2019 at Rajkot, Gujrat. The respondent No.1 is a Public Trust registered under the Maharashtra Public Trusts Act, 1950 and its object is to promote, encourage, control and regulate all amateur aquatic meets, championships, competitions, activities, trainings, within the State of Maharashtra. The appellant No.1 is a Swimming Federation of India having jurisdiction over all the States and Union Territories in India for the purpose of controlling competitions and organising training, exhibitions and other activities in swimming, diving, water polo and synchronised swimming for males and females. The respondent No.1 – original plaintiff is affiliated to appellant No.1. During the pendency of the suit filed by respondent No.1, the trial Judge has already passed a detailed order on an earlier occasion

granting interim relief in terms of prayer Clause (b). Even during the pendency of the suit, the appellant No.1 proceeded to take various actions against respondent No.1 including the action of disaffiliation.

10. In the light of the observations made by the trial Court, especially observations which are reproduced herein before, it would surely be unfair and inequitable to deny interim relief to respondent No.1. Having gone through the impugned order passed by the trial Court, I am in agreement with the reasons recorded. The trial Court has observed in paragraph 25 as under :

“25. When ad-interim relief in terms of prayer clause (b) has been granted in favour of plaintiff and defendant No.1 is directed to recognize the plaintiff body as duly constituted body for all purposes, during the pendency of hearing of present notice of motion in view of the order dated 22.05.2018, so in continuation of said relief I am of the view that prima facie plaintiff is entitled to send entries for National Event organized by defendant No.1 in between 26.06.2019 to 30.06.2019 at Rajkot. It is argued on behalf of learned advocate for defendant Nos.1 and 2 that order in favour of plaintiff would affect SAM to which affiliation has been granted by defendant No.1. Before granting affiliation to SAM it was for defendant to take into consideration effect of ad-interim order

dated 22.05.2018 which is in existence. I do not want to further elaborate in that regard. In light discussion made above pass following order :

ORDER

1. Ad-interim relief in terms of prayer clause (a) is allowed.
2. Defendant No.1 is directed to accept entries to be sent by plaintiff for Swimming Championship to be conducted in between 26.06.2019 to 30.06.2019 at Rajkot by them and to provide link to plaintiff for said purpose.

11. In my opinion, considering the fact situation, any interference in the order passed by the trial Court would amount to defeating the object of promoting the swimming activities and depriving the participants from competing at the National level only because of disputes between the appellant No.1 and respondent No.1. For all these reasons, I do not find this is a fit case to interfere with the interim order pending the Notice of Motion before the trial Court.

12. The Appeal is dismissed with no order as to costs.

13. In view of the dismissal of the Appeal, the Civil application is disposed of.

(M.S.KARNIK, J.)