

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Hiranmay Bhattacharyya

FMA 569 of 2020

with

I.A. No. CAN 1 of 2020 (Old No. CAN 1328 of 2020)

CAN 2 of 2020 (Old No. CAN 2446 of 2020)

CAN 3 of 2020

(Assigned)

Vijay Sports Club & Ors.

Vs.

Vijay Sports Club & Anr.

For the Appellants : Mr. Aniruddha Chatterjee,
Mr. Debanik Banerjee,
Mr. Mainak Swarnokar..... Advocates

For the Respondents : Mr. Joydeep Kar,
Mr. Sauradipta Banerjee,
Mr. Arnab Roy.....for the Respondent no. 1

Mr. Samrat Sen, Sr. Advocate.
Mr. Kausik Mandal,
Mr. Anirban Pramanick
Mr. Sabyasachi Bhattacharjee
Advocates for the
Respondent No. 2/ CAB

Heard on : 10.02.2021

Judgment on : 12.02.2021

Hiranmay Bhattacharyya, J.:- The instant appeal is at the instance of the defendant nos. 2 to 5 and is directed against the later part of the order no. 91 dated January 22, 2020 passed by the Learned Judge VIth Bench, City Civil Court at Calcutta in Title Suit no. 1587 of 2018 whereby the application for temporary injunction filed by the respondent no. 1 herein was allowed.

The respondent no. 1 filed a suit for declaration that the plaintiff, a registered society is only entitled to represent Vijay Sports Club (for short “the VSC”) before various bodies including the respondent no. 2 herein and for a further declaration that the appellants being the trustees of the purported trust is not entitled to use the name of VSC and to represent it before the respondent no. 2 or other authorities and for permanent injunction restraining the defendant no. 1/ respondent no. 2 herein their men and agents and/or permitting the said trust to represent VSC and/or to allow them to participate in the cricket tournaments to be organised by the defendant no 1. A decree for permanent injunction restraining the defendant no. 1 from recognising anybody as VSC other than the plaintiff for participating in the cricket tournament was also prayed for.

The case made out by the respondent no. 1 in the plaint of the said suit may be summed up as follows-

VSC was an unregistered association carrying on sport activities like cricket, table tennis etc. and having a permanent tent at Vivekananda Park Tent. The club had several members and they formed an unregistered society for the purpose of management of the sport activities of the club. The defendant no. 3 was the President of the VSC till 06.05.2018 and he used to represent the VSC before the defendant no. 1 for all activities in connection with different tournaments of cricket conducted by the defendant no. 1. In order to continue with its objectives, the members decided that the club should be registered under the Societies Registration Act and accordingly the VSC was duly registered under the said Act on June 18, 2018. In a meeting held on 06.05.2018, a full-fledged committee was elected and none of the defendant nos. 3, 4 and 5 have been elected as the members of the said committee of VSC. VSC was affiliated to the defendant no. 1 since the 1952 and is participating in cricket tournaments organised by the defendant no. 1. The plaintiff came to learn from the defendant no. 1 that the defendant no. 3, as Settlor, formed a trust claiming to be the VSC and the defendant

nos. 3, 4 and 5 are claiming to be the trustees of the said trust. The plaintiff issued a letter to the defendant no. 1 dated 24.11.2018 seeking permission to permit their cricket players to participate in the second division tournament for the 2018-19 and onwards and thereafter the plaintiff requested the defendant no. 1 to recognise the plaintiff as VSC being a registered society. The plaintiff alleges that if the defendant no. 1 is permitted to hire the players of the defendant no. 2 on their wrong representation to be the plaintiff's club to play in the ensuing tournaments organised by the defendant no. 1, in such cases the players prepared by the plaintiff's club for participating in the second division tournament organised by the defendant no. 1 will be completely demoralised and the plaintiff was thus compelled to file the instant suit.

In connection with the said suit the plaintiff/ respondent no. 1 herein filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure praying for an order of temporary injunction restraining the defendant no. 1 their men and agents and /or permitting the trust to represent VSC and/or to allow them to participate in the cricket tournaments to be organised by the defendant no. 1. A prayer for

temporary injunction was also made for restraining the defendant no. 1 from recognising anybody as VSC other than plaintiff for participating in the cricket tournaments for them.

The appellants herein contested the application for temporary injunction by filing a written objection denying the allegations contained in the injunction application. It was specifically stated therein that the defendant no. 3 executed a trust deed on May 22, 2018 and the plaintiff's society which came into existence on June 18, 2018 has no legal status in the eye of law.

The learned Trial Judge, by the order impugned, allowed the application for temporary injunction on contest. The defendant no. 1 and their men and agents were restrained from permitting the defendant nos. 2 to 5 to represent the VSC and /or allow them to participate in the cricket tournaments to be organised by the defendant no. 1 for the ensuing cricket season 2018/ 2019 and onwards till the disposal of the suit.

Being aggrieved, the defendant nos. 2 to 5 have preferred the instant appeal.

Mr. Chatterjee, learned advocate appearing for the appellant contended that the plaint case proceeds on the basis that the creation of trust by the defendant no. 3 is not valid and as such the instant suit is not maintainable as there is no prayer for cancellation of the deed of trust. He, further, contended that the society was registered subsequent to the creation of trust and as such the society has no existence in the eye of law. By drawing the attention of this Court to the decision of the Electoral Officer on the complaint dated September 13, 2019 made by the learned advocate of the plaintiff/ respondent no. 1 herein, Mr. Chatterjee contended that the Cricket Association of Bengal (for short "the CAB) recognised the trust to be an affiliated member of the CAB and gave liberty to the trust to offer a representative to attend the annual general meeting as well as to sent up a candidate for the ensuing elections. Thus, it is contention of Mr. Chatterjee that, once the CAB has acknowledged the trust to represent the club, it is axiomatic that the trust is in control over the management and affairs of the club. He contended that before passing an order of injunction under Order 39 Rule 1 and 2 of the Code, the court has to be satisfied that the plaintiffs have made out a strong prima facie case to go for trial; the balance of convenience

and inconvenience is wholly in favour of grant of injunction and that the plaintiff will suffer irreparable loss and injury unless the injunction sought for is granted. He contended that the learned Trial Judge while deciding the application for temporary injunction was of the view that once the objections raised by the defendants by filing an application under Order 7 Rule 11 of the Code cannot be sustained, the plaintiff's application for temporary injunction should be automatically allowed. He further contended that the impugned order is an unreasoned one and the same is liable to be set aside on that ground alone. Mr. Chatterjee relied upon a judgment of the Hon'ble Supreme Court in the case of *Premji Ratansey Shah and Ors. vs. Union of India and Ors.* reported at (1994) 5 SCC 547 in support of his contention that a plaintiff has to satisfy the existence of his rights in order to obtain an order of injunction.

Mr. Kar, learned Senior Advocate appearing for the respondent no. 1 disputed the contentions of Mr. Chatterjee. He submitted that initially the club was an unregistered society. Subsequently, the members in the Annual General Meeting (for short "the AGM) held on May 6, 2018 unanimously decided to register the club under the provisions of the Societies

Registration Act. The members of the governing body of the club were also elected in the AGM. On the basis of the said resolution the society was registered and the society is in control over the management and affairs of VSG. He contended that the trust was created with a different objective and not for the purpose of taking over the management of Vijay Sports Club. He submitted that a trust cannot administer the registered society. He also contended that immediately upon registration of the society the properties of the club vested upon the society in terms of the provisions of the statute. He placed reliance upon an order dated February 3, 2020 of an Electoral Officer of the CAB and submitted that Vijay Sports Club is entitled to be represented at the Special General Meeting through Shri Anjan Ukil.

Mr. Sen, the learned senior advocate appearing for the respondent no. 2 submitted that a list of 30 players was submitted by the learned advocate for the respondent no. 1 and he, upon taking instructions on the said list, was instructed to submit that out of the 30 players mentioned in the list, 12 players have already sought for transfer to other clubs. He, however, submitted that the respondent no. 2 has nothing to do with the management and affairs of the Vijay Sports Club and

the respondent no. 2 shall recognise and/ or acknowledge the body which is entitled to manage the affairs of the club as per the decision of the Court.

We have heard the learned Advocates of the respective parties and have perused the materials on record.

Two warring groups within a club are fighting against each other claiming control over the management and affairs of the club. Both the groups claim that they represent the VSC. The respondent no. 1 claims that the club is being run by a registered society, while the appellants claim that the trust is in control over the management and affairs of the club. Such dispute had brought the parties before the Trial Court and ultimately before this Court.

Admittedly, VSC was an unregistered association. The members of such association were managing the affairs of VSC and the defendant no. 3/ appellant no. 2 herein was the President of the VSC till May 6, 2018. It appears from the minutes of the Annual General Meeting (for short “the AGM”) held on May 6, 2018 at the club tent, that the members of VSC selected the members of its governing body. The members

attending the AGM subscribed their signatures to the minutes of the said AGM. It further appears from the said minutes that the house felt that it was necessary to register the club under the provisions of the Societies Registration Act, 1961. After a discussion over the subject matter in issue, the members unanimously decide to go for registration. It appears from the e-challan dated May 9, 2018 that the registration fees for new society registration was deposited in the name of "Vijay Sports Club". Subsequently, the society was registered on June 18, 2018 under the West Bengal Societies Registration Act, 1961. After the payment of fees for registration of the society and during the period when the matter relating to registration was pending before the registration authorities under the West Bengal Societies Registration Act, 1961 the appellant no. 2 herein, as Settlor, executed a deed of declaration of trust on May 22, 2018 and the same was registered before the Additional Registrar of Assurances-III on Kolkata on May 24, 2018. It appears from the deed of declaration of trust that the appellant no. 2 claims to have been running the club with the help of some associates who are not the members of the club. It further appears therefrom

that the trustees were appointed for holding the trust property being a sum of Rupees Ten Thousand only.

A “trust” is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner; the person who reposes or declares the confidence is called the “author of the trust”; the person who accepts the confidence is called the “trustee”; the person for whose benefit the confidence is accepted is called the “beneficiary”; the subject-matter of the trust is called “trust-property” or “trust-money”; the “beneficial interest” or “interest” of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the “instrument of trust”.

Upon reading the declaration of trust as a whole, we are of the prima facie view, that the trust was not created for the purpose of taking over the unregistered association and for controlling the management and the affairs of the club. The subject matter of trust is the trust money of Rupees Ten

thousand only and the assets of the unregistered association were not taken over by way of execution of the said instrument.

The defendant no. 3 as a President of an erstwhile unregistered club also cannot claim the ownership of the club and execute an instrument of trust for taking over the management and control of VSC. On the other hand the members of the erstwhile unregistered club decided to register the club under the provisions of the West Bengal Societies Registration Act, 1961. Such decision was taken unanimously by the members present in the AGM even prior to the execution of the Deed of trust. Steps were taken for registration of the society and ultimately the same was registered. From the various communications between the plaintiff/ respondent no. 1 herein on one hand and various authorities namely the CAB and the Kolkata Metropolitan Development Authority on the other hand, it appears to us that the registered society was recognised to represent the VSC before such authorities. Thus, we are of the prima facie view that the respondent no. 1 herein/the plaintiff have made out a strong prima facie case to go for trial.

The Cricket Association of Bengal being the respondent no. 2 herein who is the defendant no. 1 in the suit is not an authority for deciding the dispute as to whether a registered society or a trust is in control over the management of affairs of VSC and can represent the VSC. The decision on the complaint dated September 13, 2019 observing that the trust cannot be disqualified from participating in the AGM or in the ensuing elections of the CAB or the decision of the Electoral Officer dated 03.02.2020 holding that VSC is entitled to be represented at the Special General Meeting through Shri Anjan Ukil neither confers any right either upon the appellants or upon the respondent no. 1 nor does it take away any of their rights. As such the said decisions of the Electoral Officers of the CAB on different occasions do not have any impact in the matter of deciding the instant appeal.

The allegation in the plaint is that the plaintiff being a registered society is entitled to represent the VSC and the defendant nos. 2, 3, 4 and 5 being the trustees of the trust is not entitled to use the name of VSC and/or to represent VSC to the defendant no. 1 or any other authority. It has been also alleged in the plaint that the trust has not taken over the assets of the club.

The allegation against the defendant nos. 2, 3, 4 and 5 is that they are creating a cloud upon the right of the plaintiff being the registered society to represent the VSC before the defendant no. 1 or other authorities. The plaintiff has prayed for a declaration that the defendant nos. 2, 3, 4 and 5 being the trustees of the purported trust is not entitled to use the name of VSC and to represent the plaintiff club to the defendant no. 1 or any other authorities.

We have already observed that the unregistered association was not taken over by the trust and it is only the trustees of the said trust who are exerting their right to control the management and affairs of the VSC and to represent it before various authorities. As such we are of the view that the instant suit is maintainable in its present form.

The defendant no. 3 was the President of VSC till May 6, 2018 when it was an unregistered society. The said defendant did not attend the AGM of the club held on May 6, 2018 for reasons best known to him. A decision was taken in the said meeting to get the society registered under the Societies Registration Act, 1961 at a point of time when the trust deed did not see the light

of the day. A committee was also formed in the said meeting. The creation of trust by the defendant no. 3 claiming to be the owner of the Club, in our view, cannot nullify the decision of the members of the VSC, taken unanimously, in the AGM. It is also inconceivable that the defendant no. 3 can claim to be the owner of the VSC. Thus, no credence can be given to the contention of the appellants that the registration under the Act of 1961, meeting dated May 6, 2018 and the committee formed in such meeting has no legal basis.

For the reasons as aforesaid, we are of the prima facie view, that the appellants herein cannot represent the VSC and the plaintiff/ respondent no. 1 is entitled to represent the VSC.

It is an admitted fact that VSC is affiliated with the CAB i.e. the respondent no. 2 herein and is participating in various tournaments organised by the respondent no. 2 herein. The erstwhile unregistered club has been registered under the West Bengal Societies Registration Act, 1961 and upon such registration the property belonging to the society shall be deemed to be vested in the governing body of the society and shall be referred to as the property of the society.

The registered society is in control over the management and affairs of the club and is entitled to represent the VSC before various authorities. The activities of the club including participation in the tournaments organized by the CAB are to be supervised and regulated by the management of the club. As such balance of convenience and inconvenience lies in favour of the plaintiff/ respondent no. 1 herein in the matter of grant of injunction and the interest of the club will be affected unless the order of injunction is passed in favour of the respondent no. 1 herein as rightly observed by the learned Trial Judge.

There is no dispute to the proposition of law laid down by the Hon'ble Supreme Court in *Premji* (Supra) that a party must satisfy the Court as to the existence of a right which is to be protected by injunction. In the instant case we are of the view that the plaintiff/ respondent no. 1 herein has succeeded in establishing their right prima facie, as observed by us herein before, in order to get an order of injunction.

This court is, however, in agreement with the submission made by Mr. Chatterjee that the order impugned does not record reasons for passing an order of injunction. This Court, however,

did not find any infirmity in the ultimate conclusion arrived at by the learned Trial Judge and for such reason this Court proceeded to decide the instant appeal on its merit instead of remanding the matter to the learned Trial Judge for fresh consideration.

For the reasons as aforesaid we are not inclined to interfere with the later part of Order no. 91 dated January 22, 2020 passed by the learned Judge, VIth Bench, City Civil Court at Calcutta in Title Suit no. 1587 of 2018. The appeal being FMA no. 569 of 2020 stands dismissed thereby affirming the aforesaid order no. 91 dated January 22, 2020 by virtue of which the plaintiff's application under Order 39 rule 1 and 2 read with Section 151 of the Code was allowed. The applications being CAN 1 of 2020 (Old no. CAN 1328 of 2020), CAN 2 of 2020 (Old no. CAN 2446 of 2020), CAN 3 of 2020 are also disposed of accordingly. There shall be, however, no order as to costs.

We, however make it clear that the observations made hereinabove are all prima facie findings only for the purpose of disposal of the instant appeal. The Learned Trial Judge will be free to decide the suit without being influenced by the above observations of this Court.

The Learned Judge VIth Bench, City Civil Court at Calcutta is requested to dispose of the Title Suit No. 1587 of 2018 as expeditiously as possible and positively by the end of September 2021.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Subrata Talukdar, J.)

(Hiranmay Bhattacharyya, J.)