

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
Original Side

Present:- Hon'ble Justice Subhasis Dasgupta.

ALP No. 5 of 2021

Calcutta Club Limited
Vs.
Bhaskar Gupta & Ors.

For the Petitioner	:	Mr. Jishnu Saha, Sr. Adv. Mr. Rajarshi Dutta, Adv. Mr. Sayak Ranjan Ganguly, Adv.
For the Respondent No. 1	:	Mr. Bodhisatta Biswas, Adv.
Intervenor	:	Mr. P. Sancheti, Adv.
Heard On	:	02.03.2022.
Judgment On	:	11.03.2022.

Subhasis Dasgupta, J:-

The present application under Clause 13 of the Letters Patent read with Section 24 of the Code of Civil Procedure, 1908, is for transfer of proceedings being Title Suit No. 1044 of 2021, pending before the court of learned Civil Judge, (Senior Division), 4th Court at Alipore to this Court in Original Side in exercise of extraordinary civil jurisdiction of this Court, and also for trying the said Title Suit analogously with C.S. No. 214 of 2021, pending before this Court (High Court) in Original Side.

Mr. Jishnu Saha, learned senior advocate, representing petitioner (Calcutta Club Limited) submitted that one Jeet Banerjee had already instituted a suit before this Court being C.S. No. 214 of 2021, virtually challenging his suspension order, dated 27th September, 2021, together with many other declaratory reliefs, as specifically mentioned in prayer portion of such suit.

Mr. Jeet Banerjee was a member of the Management Committee of the petitioner Club, and at the relevant point of time he performed his role, as Chairman of Maintenance Sub-Committee.

For the alleged malfunction of Mr. Jeet Banerjee an Extraordinary General Meeting was held on 12th December, 2020, in the petitioner Club, and certain resolutions were adopted in such meeting.

While challenging the suspension order, Mr. Banerjee fundamentally challenged requisitioning of Extraordinary General Meeting, held on 12th December, 2020, and all actions emanating therefrom pursuant to the resolutions being adopted in such meeting.

In the Original Side of this Court, C.S. No. 214 of 2021 came to be instituted by Mr. Jeet Banerjee on 4th October, 2021. It is pending before this Court.

The respondent/plaintiff (Mr. Bhaskar Gupta) similarly sought for certain declaratory reliefs upon primarily challenging his suspension order, dated 27th September, 2021, consequent upon EoGM, held on 12th December, 2020, in a Title Suit No. 1044 of 2021, now pending before the court of

learned Civil Judge (Senior Division), 4th Court, Alipore. All actions emanating from the resolutions being adopted pursuant to EoGM held on 12th December, 2020, were also under challenge in such Title Suit. The respondent/plaintiff (Mr. Bhaskar Gupta) at the relevant point held his post, as Chairman of the Finance Sub-Committee.

Mr. Saha, strenuously argued that both the suits had been instituted challenging their respective suspension order issued individually against Mr. Jeet Banerjee, and Mr. Bhaskar Gupta for their alleged malfunction in their respective field of activity.

Challenges were raised in both the suits to nullify the Extraordinary General Meeting, held on 12th December, 2020. Similarly, suspension order issued against the respective parties, referred hereinabove, was also under serious challenge.

According to Mr. Saha, proposed reliefs claimed in both the suits are identical, while fundamentally challenging the EoGM, held on 12th December, 2020, and all actions subsequently flown therefrom. The issues raised in both the suits are common and identical, though allegations raised against the respective parties might be different.

Stressing upon the convenience of the parties and commonality of the issues involved in both the suits, Mr. Saha submitted that transfer of Title Suit No. 1044 of 2021, now pending before the learned Civil Judge (Senior Division), 4th Court, Alipore would be absolutely necessary to prevent conflicting decisions to come, as the adjudication of the issues in C.S. No.

214 of 2021 would have some direct impact over the Title Suit No. 1044 of 2021, now pending before the Alipore court.

Upon advancing such commonality issues involved in both the suits, Mr. Saha proposed for withdrawal of Title Suit pending before Alipore court, and for causing the same to be transferred to this Court, where C.S. No. 214 of 2021 is pending.

Apart from seeking transfer of such Title Suit, Mr. Saha also proposed for analogous trial of two such suits, thereby allowing amalgamation of two such suits, mentioned hereinabove.

Reliance was placed by Mr. Saha on a decision reported in **AIR 1956 Calcutta 65**, delivered in the case of **Lachmi Narayan Jute Manufacturing Co. Ltd. Vs. Dwip Narayan Singh** to fortify the stand of the petitioner that the present transfer application, in application of the provisions available under Clause 13 of Letters Patent, would be permissible on the premise that Alipore court being a sub-ordinate court to this Court, the High Court would be authorised to withdraw the said suit pending at Alipore court, and cause the said suit to be transferred to this Court before a Judge, sitting in the Original Side of the High Court, where C.S. No. 214 of 2021, filed by Mr. Jeet Banerjee, is pending.

Reliance was further placed on a decision reported in **AIR 1984 Calcutta 162**, delivered in the case of **Krishna Kumar Damani Vs. Ramnarain Agarwal & Anr.** by Mr. Saha, that in the absence of any express or conspicuous embargo, there would be no bar to the exercise of

special jurisdiction conferred upon the High Court under Clause 13 of the Letters Patent.

The Title Suit pending at Alipore court could be easily withdrawn to itself, and in doing such exercise, the competency of this Court to try and dispose of the suit being withdrawn would not be at a stake anymore, Mr. Saha submitted, while making elaboration.

Per contra, Mr. Bodhisatta Biswas, learned advocate for the respondent no. 1, disputing with the commonality of issues, submitted that the allegations raised against the respondent/plaintiff were completely separate and distinct, and not identical with the allegations suffered by Mr. Jeet Banerjee in C.S. No. 214 of 2021.

Since, Mr. Banerjee held the post of Chairman of Building and Maintenance Sub-Committee, the allegations branded against respondent/plaintiff were diametrically opposite, and conspicuously relatable to alleged malfunction of financial issues, being Chairman of Financial Sub-Committee and could not be taken to be at par, Mr. Biswas argued.

More so, the respondent/plaintiff was alleged to have had committed acts of misconduct constituting breach of the bye-laws of Calcutta Club Limited. It was also alleged against the respondent/plaintiff that while holding the post of Chairman of Finance Sub-Committee, some imprudent decisions pertaining to investment of fund of petitioner Club were taken, Mr. Biswas clarified.

Therefore, the allegations suffered by both the parties, referred hereinabove, could not be put in same bracket, though the respective parties might have suffered individual suspension, order dated 27th September, 2021, consequent upon the resolutions being adopted in EoGM dated 12th December, 2020.

The alleged malfunction pertaining to financial issues was scrutinised by calling for a forensic audit report. The actions taken against the respective dignitaries were definitely different, though culminated fundamentally in suspension order, issued against the respective parties, referred hereinabove.

The witnesses to be examined, and the evidence to be led, both oral and documentary, in both the suits are not common in nature.

Mr. Biswas, thus while disputing with the commonality of issues submitted with all intensity that merely on the ground of two issues being common i.e. EoGM held on 12th December, 2020, and the suspension order issued on 27th September, 2021, against the respective parties, all other issues to be adjudicated in both the suits could not be taken to be common and identical.

Profit was sought to be derived by Mr. Biswas from a decision reported in **1985 SCC Online Cal 56: AIR 1986 Cal 177**, rendered in the case of **Nirmal Chandra Dutta Vs. Pradip Kumar Dutta** that possibility of conflicting decisions to come in two different suits, which might prejudice any of the parties would be a sheer improbability, and so far as balance of

convenience is concerned, there would be no question of inconvenience in fighting out the two suits at two different places i.e. one in High Court and another at Alipore court.

It was thus emphasised that in spite of some of the documents in both the suits being common, that would be really of no consideration, and the Title Suit pending at Alipore court should not be permitted to be transferred to this Court in Original Side of this Court.

Respondent/plaintiff being *dominus litis* of his suit, had the right to make choice of his forum. Respondent/plaintiff being a retired person, the balance of convenience would always be in his favour and the pending proceeding at Alipore court should not be shifted to this Court.

It was thus suggested by Mr. Biswas that no prejudice would be caused to petitioner/Club, in the event of two suits being tried independently at two different places, mentioned hereinabove.

Admittedly, the General Committee of the petitioner Club was reorganized on 24th December, 2020 for the election being held on 23rd December, 2020.

The controversy surfaced against the respondent/plaintiff was dealt with by the new Committee members of the petitioner Club in the Extraordinary General Meeting convened on 12th December, 2020.

In Title Suit No. 1044 of 2021, now pending before the learned Civil Judge (Senior Division), 4th Court at Alipore, respondent/plaintiff has challenged the EoGM, held on 12th December, 2020, seeking declaration

that the same was illegal and invalid, likewise one Jeet Banerjee in C.S. No. 214 of 2021, now pending in Original Side of this Court, has also challenged the said EoGM held on 12th December, 2020, praying for a declaration that the requisitioning of EoGM be declared as null and void and of no effect, and not binding upon the plaintiff of C.S. No. 214 of 2021.

All actions subsequently flown and/or emanating therefrom were also subject of challenge in both the suits. The respective suspension order, dated 27th September, 2021, issued individually against the respective parties, referred hereinabove, being culmination of the purported actions taken against the respective parties, was also under challenge in both the suits, though allegations suffered by respective parties might be different, as plaintiff in C.S. No. 214 of 2021 (Mr. Jeet Banerjee) suffered allegation concerning building maintenance, while respondent/plaintiff (Mr. Bhaskar Gupta) in T.S. No.1044 of 2021 received allegation concerning his imprudent decision of fund investment.

C.S. No. 214 of 2021 was instituted on 4th October, 2021, while on 7th October, 2021 respondent/plaintiff instituted suit being Title Suit No. 1044 of 2021 before the court of learned Civil Judge (Senior Division), 4th Court at Alipore.

In both the suits Calcutta Club Limited was arrayed as defendant. Some of the issues in context with the prayers proposed in both the suits looked to be same and identical, but there is divergence also.

When everything commenced pursuant to the resolutions being adopted in EoGM, held on 12th December, 2020, which is of course under challenge in both the suits, and when ultimate action culminated in issuance of suspension order, issued individually against the respective parties, being under challenge in both the suits, the commonality of some of the issues cannot be ruled out, merely because allegation suffered by the respective parties are different, separate and distinct. Chance of coming conflicting decision, in the event of two suits being tried at two different courts, thus cannot be totally eliminated.

The decision referred by respondent, rendered in the case of ***Nirmal Chandra Dutta (Supra)*** was on different factual matrix, and patently distinguishable on facts. Such decision would thus be of no consequence in context of this case.

The power provided under Clause 13 of the Letters Patent dealing with extraordinary original civil jurisdiction of High Court, as sought to be made applicable over here, cannot cease of its application merely on the ground that protraction will be there in the ultimate conclusion of trial of Title Suit, and prejudice to be suffered by the respondent by reason of his old age.

The decision cited by the petitioner rendered in the case of ***Lachmi Narayan Jute Manufacturing Co. Ltd. (Supra)*** and ***Krishna Kumar Damani (Supra)*** would be of relevance in context with the matter under reference.

The balance of convenience lies in having Title Suit No. 1044 of 2021 of learned Civil Judge (Senior Division), 4th Court, Alipore, heard by this Court, and the same is essentially required to prevent conflicting decision to come. It is thus expedient for the purpose of justice, to allow withdrawal of Title Suit No. 1044 of 2021 of learned Civil Judge (Senior Division), 4th Court at Alipore, for trying and determining the same upon allowing transfer to itself (in the Original Side of this Court), where C.S. 214 of 2021 is pending.

As regards the proposed prayer for amalgamation or analogous trial of Title Suit No. 1044 of 2021 with C.S. 214 of 2021, the same is left to be decided by the Trial Judge in Original Side of this Court.

The transfer application under Clause 13 of the Letters Patent read with Section 24 of the Code of Civil Procedure, is thus disposed of allowing transfer of Title Suit No. 1044 of 2021 of learned Civil Judge (Senior Division), 4th Court, Alipore to this Court (in Original Side), where C.S. 214 of 2021 (Jeet Banerjee Vs. Calcutta Club Limited) is pending.

Accordingly, learned Civil Judge (Senior Division), 4th Court, Alipore is directed to transfer Title Suit No. 1044 of 2021 to this Court (in Original Side), where C.S. 214 of 2021 is pending, within fortnight from the date of communication of this order.

Petitioner is directed to make communication of this order to the learned court below.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)