

02.09.2024
Sl. No.2
ss

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A.T. 329 of 2024
With
IA No. CAN 1 of 2024

Shambazar Club & ors.
Vs
Harsh Dev Gautam

Mr. Sakya Sen
Mr. Sunil Gupta

... for the appellants

Mr. Sandip Kumar De
Mr. Moyukh Mukherjee
Mr. S. N. Islam

... for the respondent

Re : **F.M.A.T. 329 of 2024**

1. The instant Miscellaneous Appeal being an appeal against an appellate order passed by the trial court is admitted.

Re : **C.A.N. 1 of 2024**

2. Heard learned Counsel for the appellants as well as learned Counsel for the respondent.

3. The brief fact in the present appeal is that the respondent/defendant in the suit had entered into a contract with the present appellant being a cricket association affiliated with the Cricket Association of Bengal (CAB).

4. It is the appellant's case that on 14th March, 2024 the defendant signed an agreement whereunder

the respondent/defendant has agreed to represent the plaintiffs' club in the cricket season 2024-2025.

5. The submission is that having entered into such an agreement and having accepted earnest money to the tune of Rs.10,000/- by executing a receipt in support thereof on the same date, the defendant is hobnobbing with another club and is being persuaded to get himself registered with another club namely, Rajasthan Club for the same cricket season. It is submitted that the sanctity of the contract is at stake as the defendant, in utter disregard of his contractual obligation vis-à-vis the present appellant is negotiating his registration with the Rajasthan Club.

6. It is the submission of the learned Counsel for the appellants that revocation of his contractual liabilities with the appellant was duly communicated to the defendant by virtue of a *whats app* message on 11.07.2024 which gave rise to the cause of action for filing the present suit.

7. Having filed the suit the plaintiffs prayed for a relief of mandatory injunction directing the defendant to register as a player for the appellant-Club. An injunction has also been prayed for, restraining the defendant from registering with another club namely, Rajasthan Club.

8. In the suit, an application was filed for grant of interim injunction. The same was heard and considered on 22.08.2024.

9. Learned Judge, Bench-X, City Civil Court, Calcutta has refused to grant *ad interim* injunction and directed the defendant to file written statement and written objection, fixing the next hearing of the matter on 18.12.2024.

10. It is submitted that the learned trial court has erred in being swayed by the issue of the suit not being maintainable, raised by the respondent relying upon Section 14(b) of the Specific Relief Act as well as the provisions contained in Section 41(e) of the Specific Relief Act.

11. It is submitted that the trial court has also erred in proceeding to consider that the plaintiffs had resorted to suppression of any relevant and material fact inviting the bar as contained in Section 41(i) of the Specific Relief Act. Non-mentioning of proceeding pending before the Ombudsman under Rule 70 of the Rules framed by the Cricket Association of Bengal, is not a relevant and material fact, suppression of which would give rise to a bar under Section 41(i) of the Specific Relief Act. The existence of the Ombudsman under the Rules as an adjudicating authority is for specified purposes and the pendency of such proceedings does not come in the way of grant of relief in a suit before the civil court of competent

jurisdiction. There being no bar to grant of relief, it was incumbent upon the trial court to consider that it was more convenient to restrain the defendant from registering himself with any other association and to fix a date in close proximity for filing of written objection and final consideration of the prayer of interim injunction, having regard to the fact that the registration of players was to commence from 1st September, 2024 and continue till 31st December, 2024.

12. In fact, not granting of an *ad interim* injunction at this stage, would cause inconvenience to the parties.

13. Learned Counsel for the defendant/respondent, on the other hand, has submitted that the Ombudsman is a creature of the Rules framed by the CAB. The plaintiffs are also its members. The adjudicatory proceeding is for the benefit of adjudication/settlement of disputes of this nature. The plaintiffs are aware of the pendency of the dispute before the Ombudsman, still they have suppressed this fact which is a relevant and material fact having regard to the nature of relief claimed in the present proceedings.

14. In so far as the relief is concerned, the submissions are manifold. The first submission is that the relief as framed is barred by the provisions contained in Section 14(b) of the Specific Relief Act as

it is not possible for the Court to supervise the performance of the continuous duty as contemplated under the alleged contract dated 14.03.2024.

15. It is the further case of the defendant that there is no concluded contract/agreement between the parties till date, enforcement of which may be sought in the proceedings.

16. The suit being not maintainable, the question of grant of any interim relief, let alone *ad interim* relief is unwarranted in the present proceedings.

17. It is also submitted that the plaintiffs are knowing about the pendency of the adjudicatory proceeding at the instance of the Rajasthan Club before the Ombudsman. They are also aware of the fact that the defendant has claimed to have already registered himself with the Rajasthan Club as is evident from the advocate's notice dated 11.07.2024 sent by and on behalf of the appellant. Any relief whatsoever if granted would be to the prejudice of the Rajasthan club. This Court should therefore refrain from passing any order behind the back of the Rajasthan Club. If any relief as prayed for, is granted the same would directly and adversely affect the right of the Rajasthan Club and as such they are proper and necessary parties to the proceedings and in their absence no orders be passed.

18. Learned Counsel has referred to Clause 56 of the Rules to submit that it is the whole and sole discretion of the prayer to get himself registered with the affiliated club from which he desires to play, subject to consent of the club. Having regard to the Rule he submits that the relief claimed in the present suit is in contravention of the said Rule also.

19. As regards the suppression of relevant and material fact alleged by the defendant, reliance has been placed on the decision of the Apex Court in the case of ***Tamilnad Mercantile Bank Shareholders Welfare Association (2) versus S.C. Sekar and others***, reported in ***(2009) 2 SCC 784***. Emphasis is laid on paragraph 35 of the said report; as well as paragraphs 21 and 22 of another report containing decision of the Apex Court in the case of ***Mandali Ranganna and others versus T. Ramachandra and others***, reported in ***(2008) 11 SCC 1*** to submit that the golden principle for grant of injunction being the existence of prima facie case, balance of convenience and inconvenience and irreparable injury, is to be viewed with the conduct of the parties, as exercise of jurisdiction for grant of injunction is an equitable jurisdiction.

20. In the present case, the trial court has taken into consideration the fact that the plaintiffs have suppressed the relevant and material fact of pendency of the adjudicatory proceedings before the

Ombudsman. That being so, the plaintiffs were disentitled to grant of any relief in the proceeding, as also grant of any interim relief. He submits that the trial court has rightly rejected the prayer of interim relief in the facts and circumstances stated above.

21. Having regard to the above submissions and having considered the report of the Apex Court, we are in agreement with the submissions advanced by the learned Counsel for the defendant/respondent. The first objection raised regarding suppression of relevant and material fact needs to be considered as the order arises out of an order passed in exercise of jurisdiction considering an equitable relief of *ad interim* injunction.

22. It is not in dispute that the defendant has claimed to have accepted payment from Rajasthan Club and has given a commitment for joining the said Club. The Rajasthan Club has raised a dispute before the Ombudsman which fact was also known to the present plaintiffs/appellants.

23. The relief as claimed, regarding the defendant's right to register himself with the Rajasthan Club, in the present facts and circumstances would have a direct effect on the rights of the Rajasthan Club.

24. We are thus not inclined to accept the submissions of the learned Counsel for the appellants that the suppression of the pendency of the present

proceedings before the Ombudsman is not a relevant and material fact.

25. In view thereof, the tentative conclusion of the trial court in so far as the relief being barred by Section 41(i) of the Specific Relief Act, in our considered opinion, does not require any interference.

26. At this juncture, learned Counsel for the appellants submits that they will take steps to ensure addition of the Rajasthan Club as a party in the suit.

27. In view of such submission and reserving such right of the appellant, we at the present stage are not inclined to express any opinion on the submissions, as the matter remains to be considered.

28. Keeping the appeal and application pending, would thus be an exercise in futility. We therefore proceed to dispose of the appeal and application dispensing with the formal requirement of calling for the lower court records, preparation of paper books etc.

29. We are, however, of the opinion that since the cricket season is between 1st September, 2024 and 31st December, 2024, the trial court should have given an early date for consideration. Fixing of a date by the City Civil Court on 18.12.2024 for final consideration of the prayer of injunction therefore requires interference.

30. We therefore direct that the defendant should file written objection before the trial court within a week. It would be open to the appellants to file reply if so desired within a week thereafter. It is expected that the trial court will take up the application for interim injunction and consider the same with a view to its final disposal on or before 20th September, 2024.

31. With the above observations, the **application** stands disposed of.

32. In view of the order passed in the application nothing survives in the present appeal and the **appeal** is also disposed of.

33. It is prayed by the learned Counsel for the appellants that action taken during the pendency of the application be made subject to the result of the case. We find no need to make any observation as the law is clear in this regard.

34. The learned Counsel representing the appellants undertakes to submit the certified copy of the impugned order immediately after receipt of the same.

35. All parties to act on server copy of this order.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)