



Second Appeal No.599 of 2016

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 26.02.2024**

**CORAM :**

**THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN**

**Second Appeal No.599 of 2016**  
**and C.M.P.Nos.13904, 11351 and 13864 of 2016**

Madras Cricket Club  
represented by its Honorary Secretary  
No.1, Babu Jagjivanram Road, Chepauk  
Chennai 600 005.

.... Appellant

-Vs-

T.Mohan Lal

.... Respondent

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 10.06.2016 made in A.S.No.388 of 2009 on the file of the learned IV Additional Judge, City Civil Court reversing the judgment and decree dated 10.11.2008 made in O.S.No.2578 of 2007 on the file of the learned III Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.P.H.Arvind Pandian  
for M/s.S.Raghunathan and  
Sharanya Vaidyanathan

For Respondent : Mr.G.Veerapathiran



Second Appeal No.599 of 2016

## **J U D G M E N T**

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The present Second Appeal arises out of the judgment and decree of the Court of the IV Additional City Civil Court at Chennai dated 10.06.2016 in A.S.No.388 of 2009 in reversing the judgment and decree of the learned III Assistant City Civil Court at Chennai dated 10.11.2008 in O.S.No.2578 of 2007.

For the sake of convenience, the parties are referred to as per their rank in the suit.

2. The undisputed facts leading to the appeal are, the plaintiff T.Mohan Lal was a member of the Madras Cricket Club, the defendant. Proceedings were initiated against him invoking Article XXVIII of the Memorandum and Articles of Association of the defendant. A complaint had been given against the plaintiff by a member stating that he had misbehaved with a ten year old girl. The incidence is alleged to have taken place on 04.10.2005, but the complaint was given only on 15.10.2005. On 18.11.2005, the plaintiff gave a reply to the allegation. According to him, the girl with regard to whom allegation of misbehaviour had been made, had been saved by the plaintiff from drowning and that has been misconstrued by the complainant as if he had misbehaved with her. Consequently, on the basis of the enquiry, the Committee, in exercise of the first



Second Appeal No.599 of 2016

part of Article XXVIII of the Memorandum and Articles of Association decided to place the plaintiff under suspension.

3. He challenged this order of suspension in a suit in O.S.No.8006 of 2005 on the file of the III Assistant City Civil Court, Chennai. Originally, an order of injunction was granted. Subsequently, by an order of this Court in C.R.P.No.1852 of 2005, it was directed that the application itself should be taken up for hearing. After enquiry, the application for injunction came to be dismissed. Thereafter, the Club convened an extraordinary general body meeting in terms of bye-law XXVIII of the Club. Challenging the same, another suit was presented by the plaintiff in O.S.No.651 of 2006.

4. On 30.01.2006, minutes before the extraordinary general body meeting was to be convened, the plaintiff, by a letter dated 30.01.2006 tendered his resignation without prejudice to his rights. The explanation given by the plaintiff is that he was haunted and humiliated for no fault of his and therefore he has given such a letter. The resignation was received by the Honorary Secretary of the Club. The matter does not stop there. The Honorary Secretary placed the resignation letter before the Committee and the Committee rejected the resignation so presented. In the mean time, on 30.01.2006 by an unanimous resolution in the extraordinary general body meeting, the plaintiff was removed



Second Appeal No.599 of 2016

from the membership of the Club. Challenging the same, he presented O.S.No.2578 of 2007.

5. The defendant entered appearance and filed a detailed written statement. According to them, they had scrupulously complied with the terms of Article XXVIII of the Memorandum and Articles of Association of the Club. They further pleaded that after due deliberation on the complaint given by a long term temporary member, a show cause notice was issued to the plaintiff on 15.11.2005. On receipt of the show cause notice, the plaintiff issued a reply on 18.11.2005. The complaint as well as explanation were placed before the Executive Committee on 24.11.2005. On that date, the plaintiff appeared before the Committee and reiterated his contentions in his written reply dated 18.11.2005. Not being satisfied with the reply, the Executive Committee decided to suspend the plaintiff for a period of three months. They further stated that since the matter was precipitated by filing of suits, considering the allegations made against the plaintiff, the Executive Committee decided to exercise the power vested in it under Article XXVIII of the Memorandum and Articles of Association.

6. According to the Committee, the allegations were serious and grave in nature and hence an enquiry was conducted into it. A Sub-Committee was



Second Appeal No.599 of 2016

appointed, which was headed by the Honorary Secretary of the Club and the Committee, after enquiry submitted a report to the Executive Committee. The Executive Committee also deliberated on the findings and consequently decided it was a matter in which the Club has to decide on the removal of the member. Hence, on 30.01.2006, an extraordinary General Body Meeting had been convened. The receipt of the resignation letter of the plaintiff from the Club was accepted by the Honorary Secretary. It was pleaded that the Executive Committee decided to reject the same on account of the fact it was a qualified one. The defendants further pleaded that the extraordinary general body having taken a stand to remove the plaintiff, the same cannot be gone into by the Civil Court.

7. The learned trial Judge framed the following issues:

1. *Whether the suit has become infructuous?*
2. *Whether the termination order passed by the defendant violates the principles of natural justice?*
3. *Whether the notice dated 17.01.2006 issued by the defendant and the resolution passed by the defendant on 30.01.2006 is null and void and unenforceable in law?*
4. *Whether the plaintiff is entitled for a declaration as prayed for?*
5. *To what relief the plaintiff is entitled?*



Second Appeal No.599 of 2016

8. On the side of the plaintiff, he examined himself as P.W.1. He marked Exs.A1 to A4. On the side of the defendant, none entered the witness box, but the Memorandum and Articles of Association were marked as Ex.B1 through the plaintiff.

9. After a detailed trial, the Court came to the conclusion that the suit challenging the resolution is not maintainable and hence dismissed the suit. A regular appeal was presented before the learned IV Additional City Civil Court at Chennai.

10. The lower appellate Court took a view that the suit is maintainable even after the submission of the resignation and hence answered that issue in favour of the plaintiff. It went on to discuss on the merits of the case and came to the conclusion that the notice dated 17.01.2006 issued by the Committee to the plaintiff under Ex.A2 is violative of the provisions relating to notice under bye-law XXVI. It further held that the failure on the part of the Executive Committee to inform the resignation before the General Body is fatal. On the merits of the case, it held that the copy of the evidences had not been given and opportunity to cross examine the witnesses had not been afforded to the plaintiff and therefore it was violation of principles of natural justice. Finally, it concluded that the defendant did not produce any evidence to show that there was quorum



Second Appeal No.599 of 2016

as required under bye-law XXVIII and hence the alleged resolution dated 30.01.2006 is bad. On the basis of these findings, the lower appellate Court came to the conclusion that the suit has to be decreed as prayed for and accordingly the appeal was allowed.

11. Against this reversing finding, the present Second Appeal had come before this Court. On 18.07.2016 the Second Appeal was admitted on the following substantial questions of law:

*(i) Whether the lower appellate Court is justified in law in decreeing the suit without considering that the suit is barred on the principles of resjudicata in view of the dismissal of two earlier suits filed by the plaintiff on the very same cause of action, though for default?*

*(ii) Whether a Civil Court, exercising powers under Section 9 of the Code of Civil Procedure would be right in entertaining a suit challenging the decision taken by the Executive Committee or the General Body of a Company registered under Section 25 of the Companies Act including a Social Club, so long as the Executive Committee or the General Body has followed the procedure prescribed under the Memorandum and Articles of the Association of the said Company dealing with the suspension and expulsion of its member?*



Second Appeal No.599 of 2016

*(iii) Whether the member of such Company whose rights as a member have been suspended following a decision taken by the Executive Committee in accordance with the procedure prescribed under the Memorandum and Articles of the Association of the said Company, can still be treated as a member and been entitled to the right of prior notice being served on him as in the case of voting members of such Company ?*

*(iv) Would not a person who has been admitted as a member of Social club, only at the discretion of the committee thereafter be bound strictly by the Memorandum and Articles of the Association of the club and whether he can be allowed to challenge the decision taken by the Executive Committee or the General Body of members as being unfair or unreasonable, as long as he is afforded an opportunity to show cause against his suspension or expulsion?*

12. Mr.G.Veerapathiran learned counsel for the plaintiff was on caveat and therefore notice was taken by him in the appeal. This appeal was argued before me by Mr.Arvind Pandian for M/s.S.Raghunathan and Sharanya Vaidhyanathan for the appellant and Mr.Veerapathiran for the respondent.



Second Appeal No.599 of 2016

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13. Placing reliance upon the judgment of **T.P.Daver -vs- Lodge Victoria (AIR 1963 SC 1144)** Mr.Pandian would submit that, the Club had scrupulously complied with its bye-laws and that the jurisdiction of the Civil Court stands ousted to declare the same as null and void. He would place reliance on Para 6 of the said judgment to state that, whether a bye-law is mandatory or otherwise depends upon the setting in which it appears. In the facts of the present case, as the plaintiff had admitted the receipt of the notice of the Sub-Committee and also of the Extraordinary General Body Meeting dated 30.01.2006, it is not open to him to challenge the same.

14. Mr.G.Veerapathiran would submit that it is no doubt true that the plaintiff had resigned. But, the defendants had not put forth before the Court any record to show that minimum quorum was available for the passing of the resolution and therefore any resolution which does not comply with the requirements of bye-law is void. He would state that no opportunity had been granted to him in order to cross examine the complainant and therefore there has been a violation of principles of natural justice. On this ground, he would say that this Court should not interfere with the judgment and decree of the lower appellate Court.



Second Appeal No.599 of 2016

15. I have carefully considered the arguments on either side. The law relating to Clubs, Societies and Unincorporated Corporations, as pointed out above is settled in the judgment in **T.P.Daver -vs- Lodge Victoria (AIR 1963 SC 1144)**. Following the verdicts that had been rendered by the English Courts, the Supreme Court came to the conclusion that insofar as Clubs are concerned, a member can be expelled in terms of the contract that is entered into between the member and the Club. In the facts of the present case, the contract is found in the Memorandum and Articles of Association of the defendants. The Memorandum and Articles of Association gives the power to the defendants to expel a member if the Executive Committee is satisfied that the conduct of such member would bring disrepute to the Club. Mere satisfaction of the Executive Committee is not sufficient. The said satisfaction of the Executive Committee must be placed before the General Body Meeting convened specially for this purpose in terms of bye-law XXVIII. If there has been compliance of principles of natural justice and that of the bye-laws, the jurisdiction of the civil Court under Section 9 of the C.P.C., is impliedly barred.

16. However, I am saved from the trouble of probing whether such enquiry had in fact taken place and if the quorum existed for the expulsion of the plaintiff by virtue of the fact that, the plaintiff himself decided to terminate the relationship he had with the Club, by his resignation dated 30.01.2006. The



Second Appeal No.599 of 2016

documents Exs.A1 to A4 when carefully perused shows that the Honorary Secretary admits receipt of the letter of resignation, but he had arrogated himself the power of rejection of such resignation.

17. As pointed out by the Supreme Court, being a member of a Club depends upon the contract between the parties. The contract between the parties has to be scrupulously adhered to in case the Club wants to expel a member. There is a provision relating to resignation which is bye-law XVI. No doubt, as pointed out by Mr.Veerapathiran, the side-note speaks about resignation of persons leaving the limits of Greater Chennai. However, the side-notes do not govern the interpretation of the main bye-law. Clause (1) of the bye-law XVI reads as follows:

*" Any member wishing to resign his membership has to **notify** the Honorary Secretary in writing and acknowledgement obtained, failing which he will be required to continue to pay all subscriptions and other charges payable by him as a member."*

18. In the said bye-law, I do not find any statement qualifying the resignation of membership being confined only in case a member leaves the limits of Greater Chennai. The Clause speaks about voluntary relinquishment of the rights that a person has with the Club by notifying to the Honorary Secretary



Second Appeal No.599 of 2016

in writing. In this case, the plaintiff, under Ex.A3, had resigned from his membership from the Club, but however had stated that it is without prejudice to his rights. The factum that this resignation letter was received is clear from Ex.A4 dated 31.01.2006. By virtue of Ex.A3, the plaintiff had terminated his association with the Club. Once he terminates his association with the Club, the question of his removal will not arise.

19. Right to be member of an association also includes the right not to be a member of an association. Both being voluntary acts. The right to become a member can be restricted by virtue of a bye-law as also the right to remove himself from the membership could be governed by a bye-law. In this case, bye-law XVI does not qualify any such restriction on the power of resignation. The plaintiff having resigned from the membership, all that the Committee can do is to place the resignation letter before the extraordinary general body meeting. The passing of the resolution by executive general body of removal of a member is nothing but an *empty thunder* or *Brutum Fulmen*. The Club cannot remove a member, who has already removed himself from the membership by resignation.

20. This view of mine gets support from the view taken by the Allahabad High Court in **Bahori Lal Paliwal -vs- District Magistrate, Bulandhsahr and another (AIR 1956 Allahabad 511)**. It has been specifically held in that



Second Appeal No.599 of 2016

particular case that a person who is a member of an association also has a right to terminate his membership from the said association.

21. In the light of the above discussion, I have to come to the conclusion that the plaintiff having voluntarily terminated his membership from the defendant Club by resignation, could not have been removed by virtue of the resolution. There was no cause of action for the suit as the plaintiff was no more a member to seek for a declaration that the resolution passed against him was null and void. In case the plaintiff had not resigned, the Court should have probed into whether there was a quorum or not. In such an event, the plaintiff could have succeeded as the defendant has not placed any records before the Court that there was a minimum quorum. This is because, as per the judgment of **T.P.Daver -vs- Lodge Victoria (AIR 1963 SC 1144)**, it is the duty of the Club / Society / Association to place before the Court that it has exercised the power of expulsion in terms of its bye-laws and scrupulously complied with the principles of natural justice. As pointed out above, I am saved from this trouble because of the resignation of the plaintiff on 30.01.2006.

22. In the light of the above discussion, the suit having no cause of action on the date of presentation of plaint, deserves an order of dismissal. Consequently, the suit in O.S.No.2578 of 2007 is dismissed. Recording the



Second Appeal No.599 of 2016

resignation of the plaintiff, the suit having no cause of action, the judgment and

decree of the lower appellate Court necessarily has to be interfered with.

Accordingly, the judgment and decree dated 10.06.2016 made in A.S.No.388 of 2009 on the file of the IV Additional City Civil Court, Chennai is set aside. The appeal is allowed, not on the ground urged by the learned counsel for the appellant, but on the ground that there was no cause of action for the same. No costs. Connected miscellaneous petitions are closed.

**26.02.2024**

Index : Yes/No

Neutral Citation : Yes/No

Speaking Order / Non-speaking order

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Second Appeal No.599 of 2016

To

1. IV Additional Judge, City Civil Court, Chennai.
2. III Assistant Judge, City Civil Court, Chennai.



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Second Appeal No.599 of 2016

**V.LAKSHMINARAYANAN, J.**

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**S.A.No.599 of 2016**

**26.02.2024**