

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:-

THE HON'BLE JUSTICE MADHURESH PRASAD

AND

THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA

A.P.O 11 of 2023

With

A.P.O.T 2 of 2023

with

E.O.S 1 of 2022

Bhaskar Gupta

-Vs-

Calcutta Club Limited & Ors.

For the Appellant : Mr. Bodhisatta Biswas, Adv.,

For the respondent : Mr. Jayanta Sengupta, Adv.,
Nos. 1 & 2 : Mr. Sayak Ranjan Ganguly, Adv.,
Ms. Srijani Ghosh, Adv.,
Ms. Indrani Majumdar, Adv.

Judgment on : 12.12.2025

SUPRATIM BHATTACHARYA, J.:

1. The appellant was the plaintiff in the suit wherein the plaintiff sought a declaration that the Extra Ordinary General Meeting dated 12.12.2020 (hereinafter referred as 'EOGM'), and all actions emanating there from be declared illegal and void. The plaintiff also

sought similar declaration in respect of the consequential show cause dated 18/08/2021; and the notice of suspension of membership of the club for a period of one year with immediate effect, vide letter dated 27/09/2021; and consequences of these 2 letters.

2. The plaintiff also sought an injunction against the respondent Calcutta Club Limited (hereinafter referred as "club") a company incorporated under the Indian Companies Act 1913, from in any manner giving effect to the EOGM.
3. In the suit, the plaintiff, who is a senior citizen and a qualified chartered accountant claimed to be a member of the club for over 40 years. He was elected as a committee member in the general committee of the club for 9 years. During the period 2018-19 the plaintiff was Chairman of the finance sub-committee of the club.
4. An election of the general committee of the club was held on 23/12/2020, as a result of which the committee was reorganized. A new committee by a show cause notice dated 18/08/2021 communicated the decision of the Managing Committee of the club as per resolution taken in the EOGM dated 12/12/2020. The resolution was founded on a forensic audit/review conducted by Ernst and Young (hereinafter referred to as 'defendant No. 3').
5. The substance of the alleged financial lapse detected by the forensic audit was that the plaintiff as Chairman of Finance sub-committee made investments without any communication to, or approval from

the Managing Committee of the club; and that without obtaining quotations from 2-3 banks to compare interest rates, the plaintiff proceeded to make investments in **Yes Bank Tier-I (one) bond** to the tune of rupees one crore whereas the amount paid was Rs.1.12 crores, and further investment of an amount of Rs.1.5 crore in fixed deposit with one Jana Bank.

6. The plaintiff was called upon to submit his reply to the show cause within 7 days. The plaintiff submitted his reply and was afforded an opportunity of personal hearing before the Committee on 11.09.2021 whereafter the Committee decided to suspend the plaintiff from all privileges of membership of the club for a period of one year with immediate effect. Decision of the Committee was communicated to the plaintiff vide letter dated 27.09.2021 issued under the signature of the 2nd defendant (secretary).
7. The suit was dismissed by the Hon'ble single judge by order dated 26/09/2022 as being not maintainable, which order is assailed in the present appeal.
8. At the very outset the learned Advocate for the club has raised a preliminary issue regarding the present appeal being filed as an appeal from an order.
9. It is submitted that after taking into consideration the provisions contained in the Companies Act 2013, including Sections 241, 242 and 430, the plaintiff's suit was held not maintainable by the Hon'ble

Single Judge. Such decision of the Hon'ble Single Judge amounts to rejection of the plaint as contemplated under Order VII Rule 11(d) CPC. The decision of the Hon'ble Single Judge, is thus a decree under Section 2 (2) CPC for which an appeal would lie under Section 96 CPC. The present appeal however, has been filed as an appeal from an order under Order XLIII Rule 1.

10. In support of his submission Mr. Jayanta Sengupta learned Advocate for the club has placed reliance on a decision in ***Deputy Director, Employees' State Insurance Corporation Vs Ward Memorial Church School & Anr.***, reported in **2023 SCC online Cal 2914**.

11. The objection is contested by the learned Advocate for the appellant. It is submitted that the factual background is required to be seen.

12. The Appellant instituted a civil suit before Learned 4th Civil Judge (Sr. Div.), Alipore being Title Suit No.1044 of 2021 praying for separate and distinct decrees of declaration that the EOGM dated 12th December, 2020 was illegal, the letter dated 18th August, 2021 being the show cause notice sent to the Appellant was illegal, and the suspension letter dated 27th September, 2021 was wrongful, illegal and invalid. The Appellant sought consequential decrees of perpetual and mandatory injunction. The Appellant filed an Application under

Order XXXIX Rule 1 and 2 along with the Plaint, seeking temporary injunction against his suspension from the Club.

13. Respondent No. 1 filed an application before this Hon'ble Court seeking a transfer of the suit to this Hon'ble Court on the ground that a similar civil suit is pending before this Hon'ble Court. Such application was allowed, and the suit was transferred to this Hon'ble Court. During such proceedings, Respondent No.1 did not contend that the Civil Court did not have jurisdiction to try and entertain the present suit.

14. The Appellant submits that a plain reading of Section 2(2) of the CPC, which deals with the definition of a decree, clearly shows that the said provision carves out an exception in the case of an adjudication from which an appeal lies as an appeal from an order. The said provision is reproduced below:

"(2) 'decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 144, but shall not include

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation. A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final." [emphasis added]

15. An order passed in respect of an application under Order XXXIX Rule 1 and 2 of the CPC is an appealable order by virtue of Order XLIII Rule 1(r). As such the impugned order cannot be deemed to be a decree considering the clear exception provided under the CPC. As such the submission of the Respondent is unfounded.

16. We find from the records that by an earlier order dated 07.02.2023 a co-ordinate Bench condoned the delay in filing the present appeal recording that *“the appeal should not be nipped in the anvil of the invitation but encouragement must be shown on the merit”*. By the said order the Court directed to formally register the appeal and for preparation of informal paperbooks. Such order was passed in the presence of the learned Advocate representing the respondents. Thereafter the matter was placed before four other co-ordinate Benches. The matter was released by all the earlier four Benches as they were not inclined to take up the appeal. Thereafter by virtue of an assignment of Hon’ble the Chief Justice dated 30.07.2024 the matter was placed before us. We are further informed that the appellant is an octogenarian. There is also no issue regarding jurisdiction of this Court to consider the matter, in view of a specific assignment to this Court by the Hon’ble the Chief Justice. The parties have also made oral and written submissions on the merits of the matter. In the circumstances and having regard to the nature of the order we propose to pass, we find that the objection of the respondent regarding the appeal being wrongly filed as an appeal from order,

instead of an appeal from a decree, need not detain us from proceeding to dispose of the appeal, considering the law that when technicality is pitted against substantial justice, the later must prevail.

17. The Learned advocate for the appellant/plaintiff submits that the impugned order of the Hon'ble Single Judge dismissing the suit as being not maintainable, is factually and legally unsustainable.

18. He further submits that there is no established procedure which can be said to be violated by the plaintiff. The decisions to make investments were ratified unanimously by the Managing Committee. There were also no established norms requiring obtaining of quotations from banks prior to a decision to make investments of the surplus funds of the club. The investments were made for the benefit of the club, which continues to reap the benefits of such investment which witnessed robust growth. The investments were made with reputed banks. He further submits that the plaintiff brought on record overwhelming evidence that the EOGM, resolutions were product of a pre-meditated decision of the new Managing Committee of the club to wrongfully and illegally suspend the plaintiff on baseless grounds and unsustainable allegations.

19. Resolutions passed at the EOGM is otherwise also unsustainable since the quorum of the EOGM is vitiated by proxy attendance. It is the plaintiff's specific case that the EOGM was bad in

law as the same did not conform to the requirement of the Companies Act, 2013.

20. Insofar as, the issue regarding maintainability of the suit in view of the ouster of the Civil Court's jurisdiction under the provisions of the Companies Act 2013, learned Counsel for the plaintiff submits that the plaintiff need not challenge the EOGM. Even if that the EOGM survives, the show cause and the consequential suspension of the plaintiff's membership is liable to be set aside since no misconduct is made out under the memorandum and articles of association.

21. Another submission advanced on behalf of the appellant is based on Section 242(1)(b) and Section 244(1) of the Companies Act. The learned Advocate for the appellant submitted that the petitioner cannot say that the company be wound up. He thereafter submitted that the Companies Act provides only a discretionary remedy; and therefore, the appellant/plaintiff invoked the jurisdiction of the Civil Court.

22. Upon consideration of the rival submissions and having gone through the order of the trial court we find that the various issues raised by the appellant in the hearing of the present appeal have been elaborately considered by the trial Court keeping in background the facts giving rise to the appellant's suspension from membership of the club.

23. According due consideration to the facts and circumstances; and the cited cases, the trial Court has concluded that the above noted provisions of the Companies Act ousts the jurisdiction of the Civil Court with regards to the matter for which power has specifically been conferred upon the Tribunal under the Companies Act. Since, the plaintiff has challenged an extraordinary general meeting primarily raising an issue of oppression, the relief claimed by the petitioner was required to be raised before the Tribunal under the Act. Since the Civil Court did not have any jurisdiction in respect of these issues the suit has been rejected as being not maintainable.

24. While doing so the trial Court has taken into consideration that the action was taken against the plaintiff after due notice in accordance with the Articles of Association of the Company (club) and after affording the plaintiff an opportunity of hearing to meet the requirement of the principles of natural justice.

25. The Hon'ble Single Judge in the suit held that Civil Court does not have jurisdiction to deal with the issue, we therefore take note of Section 430 of the Companies Act, 2013 which is as follows:

“430. Civil court not to have jurisdiction.—No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any

power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal”

26. From the section it transpires that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the NCLT or the NCLAT is empowered to determine.

27. Section 241 of the Companies Act lays down as follows:

“241. Application to Tribunal for relief in cases of oppression, etc.—(1)

Any member of a company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company’s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.”

28. Section 242 of the Companies Act lays down as follows:

“242. Powers of Tribunal. —(1) If, on any application made under section 241, the Tribunal is of the opinion—

(a) that the company’s affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the

recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.”

29. We find that through the prayers sought for in the plaint, the plaintiff/ appellant has sought for himself remedies against the alleged acts of oppressions by the respondents/defendants. The same necessarily involves interest of the members of the Club, which is a Company under the Companies Act.

30. As regards interest of the members and the Club, the same falls within the scope of Section 241 (1)(a) of the said Act.

31. Section 242 of the said Act lays down the remedies for alleged conduct of the Company's affairs in a manner prejudicial or oppressive to any member. Under this provision the Tribunal may,

with a view to ending the matters complained of, make such orders as it thinks fit.

32. The judgments cited on behalf of the appellant are being dealt with as follows:

a) The judgment in the case of **Karan Singh Grewal vs. Secretary, Calcutta Cricket & Football Club & Others** reported in **2020 SCC OnLine Cal 1272** the judgment rendered by a learned Single Judge Bench, having no binding precedent on this Court. We further find that in the said case the learned Single Judge took note of the fact that “*in the instant case the petitioner never agitated any provision of the Companies Act as prejudicial to its Member or oppressive in nature*”. In the present case, however, the analysis of plaint and prayer made by the plaintiff leaves no doubt in our minds that the plaintiffs substantially allege acts of oppression. The judgment of **Karan Singh Grewal** (supra), therefore, does not come to the aid of the appellant.

b) The judgment of the Delhi High Court in the case of **Vijay Chhibber & Ors. Vs Delhi Gyymkhana Club Limited** reported in **2019 SCC OnLine Del 9010** again is a judgment rendered by a learned Single Judge Bench, that also of another High Court. This judgment also has no binding effect on the present forum. We also notice the fact that the learned Single Judge

therein proceeded on a finding that “*subject matter of the present suit is not mismanagement but the action of the defendant of issuing notice to the plaintiffs to show cause why the membership of the plaintiffs should not be terminated.*” The facts, therefore, in the said case is essentially different from the present case, wherein the plaintiff has substantially raised a grievance against alleged oppressive EOGM. This judgment, therefore, also does not help the case of the appellant to sustain maintainability of the case stated in the plaint before a Civil Court.

- c) He has also relied upon decision of a Single Judge judgment of the Madras High Court in the case of ***D. Pradhaman vs. The Towers Club*** reported in **2014 (1) CTC 32** to submit that in view of the provisions contained in Section 9 CPC the Civil Court has jurisdiction to try all suits. The suit involves civil right of the petitioner. The respondents therein took a plea that the club is empowered to take action against the petitioner, a member. Under the circumstances, the learned Single Judge held that when there is violation of any rule relating to the by-laws, the member was entitled to raise his legal plea by approaching the Civil Court. The issue regarding the provisions contained in the Companies Act including the jurisdiction ouster clause was not considered in this judgment by the learned Single Judge. Therefore, we find no scope for placing

reliance on decision in the case of **D. Pradhaman** (supra), and this decision is not applicable to the facts and circumstances of the present case.

33. The citations do not come in aid to the appellant.

34. The learned Advocate for the respondent has also relied upon decision of the co-ordinate Bench in the case of **Vikram Jairath & Ors., v. Middleton Hotels Private Limited & Ors.**, reported in **2019 SCC Online Cal 6663**. He submitted that the co-ordinate Bench took note of the fact that amendment of the memorandum of association in a Board Meeting and EOGM was the subject matter of the challenge in the suit. Taking note of the jurisdiction ouster clause contained under Section 430 of the Companies Act 2013 the co-ordinate Bench held that the NCLT shall have jurisdiction to decide the issue. In the case of **Shashi Prakash Khemka (Dead) Through LRs & Anr. Vs. NEPC Micon (Now NEPC India Ltd.) & Ors.**, reported in **(2019) 18 SCC 569**, relied upon by the learned Advocate for the respondent it is submitted that the scope of the provisions of Section 430 of the Companies Act has been considered threadbare and upon such consideration the Hon'ble Apex Court stated the effect of the jurisdiction ouster clause contained in Section 430 of the Companies Act in paragraph 5 in the following terms:

“The effect of the aforesaid provision is that in matters in respect of which power has been conferred on NCLT, the jurisdiction of the civil court is completely barred.”

35. The respondent's counsel has also placed reliance in decision of the Delhi High Court in the case of ***Delhi & District Cricket Association vs. Sudhir Kumar Aggarwal and others*** reported in ***2020 SCC OnLine Del 1223***. It is submitted that in the Delhi High Court after due consideration of the provisions contained in the Companies Act namely 241, 242, 244 and 430 arrived at a conclusion that the NCLT has been specifically conferred powers to address grievance arising out of affairs of a company which may be prejudicial or oppressive to any member of the company. The Delhi High Court thus has held that the Trial Court did not have jurisdiction to entertain the suit.

36. Learned Counsel for the appellant has also relied upon the judgment in the case of ***Vikram Jairath*** (*supra*) to submit that in the present case all the reliefs claimed in the plaint are not exclusively amenable to the NCLT, therefore, the suit, was maintainable.

37. The issue, viewed from the plaintiff's perception, without any doubt raises an issue of the EOGM being an act of alleged oppression of the plaintiff (member) by the company. Such issue also falls within the scope of the above noted provisions of the Companies Act 2013, for which jurisdiction lies exclusively under the NCLT. In view of the jurisdiction ouster clause in Section 430 of the Companies Act, we are of the opinion that there is an ouster of jurisdiction of the civil Court with respect to the issue raised in the plaint.

38. We are not inclined to accept the submission advanced by the learned Advocate for the appellant that only one relief is amenable to the NCLT. We find from the plaint that the primary relief is setting aside of the EOGM. The other reliefs, being actions emanating therefrom are thus consequential in nature and are dependent upon setting aside of the EOGM. The setting aside is sought for substantially alleging oppression.

39. In the case of **Vikram Jairath** (*supra*) the co-ordinate Bench has held that the plaint needs to be analysed to find out if the matters in issue which the NCLT is empowered to decide. The Division Bench held that the Court is required to find the real cause of action, which we have just discussed above and found that the cause of action substantially emerges from an alleged oppressive EOGM and consequences thereof. In the case of **Vikram Jairath** (*supra*) the plaintiff had challenged amendment of memorandum of association in a Board Meeting and Extraordinary General Meeting by filing a suit. The co-ordinate Bench in the case of **Vikram Jairath** (*supra*) also found that the relief prayed for in the plaint could be claimed before the NCLT. The Division Bench thus was not inclined to pass any interim order. The Division Bench also took notice of the bar under Section 430 of the Companies Act. The same issue in our opinion arises in the present case in view of the jurisdiction ouster clause under Section 430 of the Companies Act.

40. We also take note of the submissions with reference to Section 9 of the Civil Procedure Code 1908 which states that “*the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred*”. In the *lis* in hand there is allegation by the appellant that oppression has been committed upon a member of the Club. Therefore, in view of the above considered provisions of the Companies Act, including the jurisdiction ouster clause, we find that having regard to the nature of relief in the plaint based on an oppressive EOGM, the jurisdiction of the Civil Court is expressly barred.

41. We approve the conclusion of the learned Single Judge in holding the suit to be not maintainable by the Tribunal, as such it bars the hearing of the present *lis* by the civil court.

42. The conclusions of the learned Single Judge are sustained in view of the settled legal position as apparent from our consideration above. Without interfering with the order of the trial court, leaving the plaintiff/appellant to avail remedies in accordance with law, we dispose of the appeal. Pending applications, if any, also stand disposed of.

43. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Supratim Bhattacharya, J.)

I agree.

(Madhuresh Prasad, J.)