

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.1567 OF 2024

IN

SUIT NO.3262 OF 2019

WITH

INTERIM APPLICATION NO.12339 OF 2024

IN

FIRST APPEAL NO.1567 OF 2024

Sucheta Desmond Rodrigues

Age 53 years, Bungalow Amaay, Union Park,
Chembur (East), Mumbai – 400055.

... Appellant
(Orig. Plaintiff)

V/s.

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1. The Bombay Presidency Golf Club Limited

Having address at Dr. Choitharam Gidwani Road,
Chembur, Mumbai 400074.

2. Brijender Singh

President, The Bombay Presidency Golf Club
Limited, Having address at Dr. Choitharam
Gidwani Road, Chembur, Mumbai 400074.

3. Col. R.S. Sekhon (Retd.)

Secretary, The Bombay Presidency Golf Club
Limited, Having address at Dr. Choitharam
Gidwani Road, Chembur, Mumbai 400074.

... Respondents
(Orig. Defendants)

WITH
FIRST APPEAL (ST) NO.22218 OF 2024

1. The Bombay Presidency Golf Club Limited

Having address at Dr. Choitharam Gidwani Road,
Chembur, Mumbai 400074.

2. Brijender Singh

President, The Bombay Presidency Golf Club
Limited, Having address at Dr. Choitharam
Gidwani Road, Chembur, Mumbai 400074.

3. Col. R.S. Sekhon (Retd.)

Secretary & CEO, The Bombay Presidency Golf Club
Limited, Having address at Dr. Choitharam
Gidwani Road, Chembur, Mumbai 400074.

... Appellants

(Orig. Defendant Nos.1 to 3)

V/s.

Sucheta Desmond Rodrigues

Age 47 years, Bungalow Amaaya, Union Park,
Chembur (East), Mumbai – 400055.

... Respondent

(Orig. Plaintiff)

Mr. Rohaan Cama a/w Mr. Kyrus Modi i/by Ms. Sapana Rachure for the
Appellant.

Mr. Gaurav Sharma a/w Mr. Pranav Chavan i/by Mahesh Menon & Company
for the Respondents.

CORAM : **ARIF S. DOCTOR, J.**
RESERVED ON : **08TH MAY 2025**
PRONOUNCED ON : **11TH JUNE 2025**

JUDGEMENT :

1. This Judgement will dispose of the following two First Appeals:
 - (i) First Appeal No. 1567 of 2024 in Suit No. 3262 of 2019;
and
 - (ii) First Appeal (L) No. 22281 of 2024 in Suit No. 3262 of 2019.

2. Sucheta Desmond Rodrigues is the Plaintiff in the captioned Suit and also the Appellant (**"Appellant"**) in First Appeal No.1567 of 2024 in Suit No. 3262 of 2019, in which Respondent No.1 is the Bombay Presidency Golf Club Limited (**"the Club"**), Respondent No.2 is the President of the Club and Respondent No.3 is the Secretary & Chief Executive Officer (CEO) of the Club. Whereas the Club, Respondent No.2, and Respondent No.3 are the Appellants in First Appeal (L) No.22218 of 2024, and Sucheta Desmond Rodrigues is the Respondent. While this Judgement will dispose of both the captioned First Appeals, for the sake of convenience, reference to the parties shall be as they are arrayed in First Appeal No.1567 of 2024.

3. The Appellant had filed the captioned Suit *inter alia* seeking (i) a declaration that she is entitled to make the balance payment of the Entrance fees towards the membership of the Club in installments; (ii) specific performance of the contract entered into between the Appellant and the Respondents; and (iii) a permanent injunction restraining the Club from unilaterally/arbitrarily terminating the Appellant's membership.

4. The Trial Court, however, vide a judgement dated 5th July 2024 ("**the Impugned Judgement**"), dismissed the Suit and *inter alia* ordered the Club to refund the amount paid by the Appellant towards entrance fees.

5. It is thus that both the captioned First Appeals have been filed. The Appellant is aggrieved by the dismissal of the Suit, whereas the Club and Respondent Nos.2 and 3 are aggrieved by the portion of the Impugned Judgement whereby the Trial Court directed the Club to refund the amount paid by the Appellant towards entrance fees.

6. Before advertng to the rival contentions, it is necessary for context to set out the following facts:

- i. The Appellant had, in the year 2017, applied for a short-term membership of the Club for herself and four children, two of

whom were her biological children and the other two dependent children, namely Amoorth Shetty and Aadhyaa Shetty, who were the Appellant's wards, being the children of the Appellant's predeceased sister, one Sheetal Dayanand Shetty.

- ii. The Appellant thereafter applied for permanent membership (category B/Life) for herself and mentioned the names of all four children under "*Family Details*" in the membership form. The Appellant mentioned the names Amoorth and Aadhyaa Shetty as "son" and "daughter" and annexed the following documents, viz., (a) the Appellant's passport, (b) the birth certificates of all four children, (c) the death certificate of the Appellant's sister, i.e., Sheetal Dayanand Shetty, and (d) the Order dated 7th April 2017 passed in Guardian Petition No.3 of 2016, i.e., the Guardianship Petition filed by the Appellant and her brother for being appointed as the legal guardians of Amoorth and Aadhyaa Shetty.
- iii. The Appellant then, by her email dated 13th April 2018, informed the Club that the Appellant had made payment of an amount of Rs.6,18,760/- towards her short-term membership of the Club in December 2017 and requested the Club to allow the

Appellant to make payment of the balance membership fees in installments as follows:

(i) payment of Rs.10,00,000/- on 2nd May 2018 (for which a post-dated cheque was already deposited with the Club's accounts department that afternoon); (ii) payment of Rs.10,00,000/- on 1st December 2018 (in respect of which also she had already deposited a post-dated cheque with the accounts department of the Club); and (iii) in respect of the remaining amount, she requested time until March 2020.

iv. The Club then, vide an email dated 3rd May 2018, enclosing a letter dated 2nd May 2018, informed the Appellant and her proposer that the ballot meeting was scheduled for the 24th May 2018, and noted that a sum of Rs.10,00,000/- had been paid in advance and that the balance amount payable '*in installments*' was Rs.49,00,000/-.

v. On 4th May 2018, the Appellant, by her email, brought to the attention of the Club that the balance amount payable was Rs.42,81,240/- and not Rs.49,00,000/- as recorded by the Club in its letter dated 2nd May 2018, enclosed with the email of 3rd

May 2018 by pointing out that the Appellant had till date made payment of an amount of Rs.16,18,760/- and accordingly sought the Club's confirmation.

- vi. The Club then, vide an email dated 18th May 2018, enclosed certain EMI options, which stipulated that the payments could be made in installments between 1 to 4 years and also indicated that interest would be levied thereon at the rate of 15% per annum.
- vii. On 25th May 2018, the Appellant post balloting was conferred with provisional membership, and the Appellant along with the four children, was allowed to use the Club's facilities. By a letter dated 27th May 2018, the Appellant was informed that confirmation of her permanent membership would be notified subject to the completion of necessary formalities. The Appellant was issued a provisional membership card for herself as well as for each of the four children.
- viii. On 17th August 2018 the Club's accounts department addressed an email to the Appellant informing the Appellant that the outstanding amount towards membership fees as of 16th August

2018 was Rs.46,10,599/-, of which an amount of Rs.1,53,849/- was interest.

- ix. The Club then, on 14th September 2018, addressed a letter to the Appellant cancelling the membership of Amoorth and Aadhyaa, *inter alia*, on the ground that the Club, while processing admission applications, had missed the distinction between adoption and guardianship and had therefore inadvertently admitted Amoorth and Aadhyaa and issued them ID cards.
- x. The Appellant thus filed Suit No.3054 of 2018 (**“the First Suit”**) *inter alia* seeking a declaration that Amoorth and Aadhya were entitled to enjoy the rights and privileges of the Appellant’s membership of the Club. The Appellant thereafter, on 13th November 2018, took out Notice of Motion No.4310 of 2018 in the First Suit seeking to restrain the Club from preventing the children, Amoorth and Aadhya, from entering and participating in the Club events.
- xi. On 1st December 2018, the Appellant remitted a further amount of Rs.10,00,000/- to the Club toward the Appellant’s membership fees, which amount was accepted by the Club unreservedly.

- xii. The Appellant then addressed emails dated 28th January 2019 and 3rd April 2019 to the Club, *inter alia*, requesting the Club for a meeting to enable the Appellant to hand over the balance dues towards her membership fees, to which the Club did not respond.
- xiii. On 6th March 2019, the Trial Court granted an injunction in terms of prayer clause (a) of Notice of Motion No.4310 of 2018 in the First Suit, restraining the Club from preventing entry of the Appellant and her children, including Amoorth and Aadhya, into the Club and also *prima facie* observed that the byelaws did not differentiate between biological children, adopted children and wards.
- xiv. The Club then, on 21st April 2019, sent the Appellant an email enclosing a letter dated 18th April 2019 that stated there was an outstanding amount of Rs.40,08,153/- payable by the Appellant towards her permanent membership and called upon the Appellant to make immediate payment of the same.

- xv. On 23rd April 2019, the Appellant met with one Manish Kulkarni, an accounts executive of the Club, to seek a clarification of the balance amount payable. In an email sent on the same date, the Appellant informed the Club that the Appellant had made a payment exceeding Rs.26,00,000/- out of a total of Rs.59,00,000/-. The Appellant also reiterated that while the Club offered every member a three-year installment plan to pay, the Appellant had paid more than 50% of the membership fees in less than one year and therefore requested that the Club verify the accounts and resolve the matter. The Appellant also offered to visit the accounts office of the Club to help resolve the matter expeditiously. The Club, however, did not respond to this letter.
- xvi. On 23rd July 2019, the Club addressed a letter to the Appellant demanding payment of Rs.41,56,526/- for the outstanding membership fees and applicable interest by 31st July 2019, failing which the Appellant's provisional membership would be terminated and all partial payments made by the Appellant towards the membership fees would be forfeited. The Club further recorded that the Appellant was also in breach of Article

10¹ of the Articles of Association of the Club for non-submission of three golf score cards.

xvii. The Appellant, by her letter dated 25th July 2019, responded to the Club's letter dated 23rd July 2019 *inter alia* calling upon the Club to withdraw the said letter since it was a clear breach of the Order dated 6th March 2019, which restrained the Respondent from taking coercive action against the Appellant and her four children, and the contentions made in the said letter are vindictive and false.

xviii. The Club then, by its letter dated 28th July 2019, while reiterating the stand taken in the letter dated 23rd July 2019, further asserted for the first time that the Club had never accepted the Appellant's proposal to pay the membership fees in installments and "*never offered and/or extended an EMI or installment facility*". The Club thus demanded that the Appellant make payment of the sum of Rs.41,56,526/- within three days, i.e., 1st August 2019.

1 10. a) The application of every candidate for election as a Permanent Member shall be submitted to a meeting of the Committee and if approved by the Committee, such candidate shall without ballot be declared to be elected as a Temporary Member for a period of not more than six months in the first instance, during which time the candidate will be entitled to all the privileges and amenities of a Temporary Member and shall be required to submit not less than three Score Cards in respect of rounds of Golf played by him on a Club Course...

- xix. The Appellant, by her letter dated 30th July 2019, denied the Club's allegations in the letter dated 28th July and *inter alia* pointed out that the matter was subjudice and that the City Civil Court had passed an order in terms of prayer clause (a) of Notice of Motion No.4310 of 2018 which required the Club to essentially maintain status quo in respect of the membership of the Appellant and her children, including Amoorth and Aadhyaa.
- xx. The Appellant then, on 20th August, 2019, filed the captioned Suit ("**the Second Suit**"), and on 9th September 2019, the City Civil Court, in Notice of Motion No.3216 of 2019 in the Second Suit, passed an order in terms of prayer clause (b) of the Notice of Motion subject to the Appellant making payment of the entire outstanding amount towards membership fees, inclusive of interest, within a period of eight weeks from the date of the said order.
- xxi. It is not in dispute that the Appellant made payment of the said amount within the prescribed time.

xxii. On 20th October 2023, this Court dismissed a challenge to the Interim Order by expediting the hearing of the Suit.

xxiii. As already noted above, the Suit was disposed of by the Impugned Judgement, which *inter alia* held as follows:

"25. ... It is noteworthy to see that the plaintiff did not approach the defendant club and requested to accept balance entrance fee by way of installments / EMI, nor committee of defendant club has determined the method for making balance amount towards entrance fees in terms of rule 17 of article of association. The plaintiff has committed default in making payment towards entrance fees. Rule 10 articles of association provides that temporary member shall be require to submit not less than three score cards in respect of ground of Golf played by him on a club course. According to plaintiff she was selected by ballot committee making her eligible for membership and therefore action of defendant club accepting plaintiff's membership amounts to waiver of condition regarding submitting of three score cards in respect of rounds of Golf played on club course. Thus, it is admitted fact on record that plaintiff has not complied mandatory provision/condition regarding submitting of three score cards in respect of rounds of Golf played on club course. The witness examined on behalf of defendant club has categorically stated during oral evidence regarding non-compliance of said mandatory provision / condition. The plaintiff has not brought on record the evidence to substantiate her claim that the said condition was waived by the defendant club. The plaintiff has not produced evidence in compliance of condition laid down in rule 10 of articles of association.

26. From the correspondence on record, it is seen that the plaintiff has given opportunity for making the payment. The plaintiff herself has made correspondence and assured the defendant club to make payment. The defendant club gave opportunity for making payment of outstanding amount and thereafter issued letter of termination of membership of plaintiff. Hence the allegations of plaintiff that letter of termination is in

violation of principles of natural justice cannot be accepted. The plaintiff has failed to establish that she has paid amount towards entrance fees in accordance with the provisions of bye-laws and articles of association of defendant club. In this back drop the case law cited supra on behalf of plaintiff will not come to the help of plaintiff. The facts of the present case and the facts in the case law cited supra are not identical.

27. *Admittedly, the plaintiff has paid entire amount under the order of court towards entrance fees. However, it is also admitted fact on record that amount towards entrance fee was due and payable prior to letter dated 23/06/2019 and 28/07/2019. Admittedly the balance amount of Rs. 41,56,526/- was due and payable towards entrance fee. In this back drop the allegations of plaintiff that defendant club has committed breach of agreement cannot be accepted. The plaintiff has failed to comply mandatory provisions of articles of association and bye-laws of defendant club. The plaintiff has failed to bring on record reliable and convincing evidence to establish her entitlement for making payment towards entrance fee by way of installment / EMI. The plaintiff has paid entire amount towards entrance fee under the Order of Court. In such circumstances, the defendant club cannot be permitted to forfeit the said amount. The plaintiff is entitled for refund of amount paid towards entrance fees. In such circumstances plaintiff is not entitled to get relief of declaration and injunction. In the result, issue no. 3 to 6 are answered in the negative."*

Submissions on behalf of the Appellant

7. Mr. Cama, Learned Counsel appearing on behalf of the Appellant at the outset, submitted that the termination of the Appellant's membership by the Club was entirely malafide and only a counterblast since the Appellant had obtained an ad interim order against the Club in the First Suit.

8. He then submitted that both grounds on which the Appellant's membership had been terminated, namely that the Appellant had failed to (i) make payment of the membership fees and (ii) submit three golf scorecards, which were both *ex facie* untenable and entirely lacking in merit.

9. Mr Cama, in dealing with the first ground for termination, i.e., that the Appellant had failed to make payment of the membership fees, pointed out that the Club had expressly accepted the Appellant's request to make payment of the membership fees in installments, despite which the Club had in the termination letter asserted to the contrary and terminated the Appellant's membership. In support of his contention that the Club had agreed to accept the Appellant's membership fees in installments, he adverted to the following:

- i. The Appellant's email dated 13th April 2018, by which the Appellant had, (a) for the reasons more particularly set out therein, had requested that the Appellant be permitted to make payment of the membership fees "in installments" (b) recorded that the first installment of Rs.6,18,750/- had already been paid in December 2017; (c) offered to make payment of Rs.10,00,000/- on 2nd May 2018 and a further sum of Rs.10,00,000/- on 1st December 2018 (enclosing two cheques

for the said amounts); (d) sought time until March 2020 to make the balance payment; and (e) noted that there would be an interest component which the Appellant was willing to bear and even offered to give post-dated cheques for the same.

- ii. The Club's letter dated 2nd May 2018, enclosed with the email dated 3rd May 2018, recorded (a) that a sum of Rs.10,00,000/- had already been paid in advance by the Appellant and (b) informed the Appellant that the balance amount payable 'in installments' was Rs.49,00,000/-. Mr. Cama took pains to point out that this letter, which had infact been signed by Respondent No.3, who was also a part of the Managing Committee, expressly recorded that the balance amount of Rs.49,00,000/- was payable in installments.
- iii. The email dated 18th May 2018 addressed by the Club to the Appellant enclosing the EMI options clearly stated that the payments could be made in installments between 1 to 4 years, and that interest at 15% per annum would be levied thereon. Mr. Cama submitted that while it was never the case of the Appellant that she had made monthly installments, this email demonstrated the fact that the Club did not treat the balance

amount payable by the Appellant as being payable forthwith and was entirely conscious of and amenable to the fact that the payments were being made by the Appellant in installments along with interest.

- iv. The email dated 17th August 2018 by which the Accounts Department of the Club informed the Appellant that the outstanding amount upto 16th August 2018 was Rs.46,10,599/-, out of which the sum of Rs.1,53,849/- had been computed as interest.
- v. That the Appellant, on 1st December 2018, made payment of a sum of Rs.10,00,000/- towards membership fees, which was accepted by the Club without demur and/or protest.

10. Basis the above, Mr Cama submitted that it was clear and beyond the pale of doubt that (a) the Appellant had been permitted to make payment of the membership fees in lump sum installments (b) the Appellant had infact made such payments amounting to Rs.26,18,760/- (c) the Club had accepted the same without any demur or protest; (d) the Club had even levied interest upon the balance amount; and (e) the Club had, by its conduct, made clear that Article 17² of its AOA was not insisted upon.

2 17.a) Upon election as a Permanent Member, each person shall pay such Entrance Fees as may be prescribed from time to time by the Committee in respect of the class of Membership to which he has been admitted. No newly elected member shall

11. Mr. Cama then submitted that the Club had, for the first time after more than a year of accepting the membership fees in installments, done a complete volte face by calling upon the Appellant to make payment of the outstanding sum of Rs.41,56,526/- towards the Appellant's membership fees immediately. He submitted that it was clear that this was done only because the Appellant had, on 6th March 2019, in the First Suit, obtained an interim order against the Club. He submitted that the Club was well aware of the reasons why the Appellant had requested the Club, by its letter dated 13th April 2018, to allow the Appellant to make payment of the membership fees in installments and was conscious of the fact that the Appellant would be gravely prejudiced if suddenly called upon to make the balance payment in one shot.

12. Mr. Cama then submitted that, in the above factual matrix, it was not open for the Club to contend that the Appellant had not been permitted to make payment of the membership fees in installments. He thus submitted that the finding in the Impugned Judgement, which held that under Article 17 of the

exercise any of the privileges of permanent Membership until he has paid the full Entrance Fee and subscriptions due and payable in respect of the class to which he is admitted unless the Committee authorises payment thereof in installments as hereinafter provided.

b) The Committee shall have power to determine that the Entrance Fee or further Entrance Fee at any time payable may be paid in installments and to prescribe conditions subject to which the same shall be so payable in installments. In any such case a newly elected Member shall be entitled to all privileges of Membership but shall not be entitled to attend meetings of the Club or to vote thereat until he has paid the full Entrance Fees due and payable by him.

c) Unless otherwise determined by the Committee, if payment of an original Entrance Fee is not made within one calendar month from the date of election. If the Member is resident in India, or three months if not so resident, or in any case where the Entrance Fee is payable in installments. If any installment is not paid within one calendar month of the date appointed for payment, the election of that Member shall be void.

Club's AOA the grant of an installment facility lay entirely within the discretion of the Managing Committee and that there was nothing on record to show that such permission was granted, thereby rendering the Appellant in default, was wholly untenable and thus plainly erroneous and perverse.

13. He then submitted that the Trial Court had failed to properly analyse and appreciate the material on record, which unequivocally demonstrated that the Club had, in fact, not only permitted the Appellant, by its conduct, to make payment of membership fees in installments but had also accepted the same without any demur or protest after levying interest on the outstanding amount. Mr. Cama thus contended that the findings of the Trial Court in paragraphs 25 and 27 of the Impugned Judgement were perverse, contrary to the record, and thus liable to be quashed and set aside.

14. Mr. Cama then submitted that even a plain reading of Article 17 of the AOA made it clear that the Club was expressly empowered to permit payment in installments and to condone any delay in payment. In support of his contention, he placed reliance upon the last line of Article 17(a), which explicitly contemplated the authorisation of installment payments and pointed out Article 17(c), which provided that payments shall be made within a stipulated timeline *“unless otherwise determined by the Committee”*. He reiterated that the correspondence on record established that the Appellant was

informed by both the CEO and the Secretary of the Club (Respondent No. 3), vide the letter dated 2nd May 2018 (enclosed with the email dated 3rd May 2018), that the balance amount of Rs.49,00,000/- could be paid 'in installments' and that the Appellant had accordingly done so for a period of over one year until the Club suddenly did a volte face by addressing the letter dated 18th April, 2019 (enclosed with the email dated 21st April 2019). He also reiterated that the Club had accepted these installments without any demur or protest and that in these circumstances, it was not open for the Club to resile from its earlier representation or to contend that the Appellant was not granted any facility/accommodation to make payment of her membership fees in installments.

15. Mr. Cama then, without prejudice to the above, submitted that the question of whether the installment facility was formally authorised by the General Committee or not was entirely a matter of internal or indoor management. He submitted that the Appellant, as an external party, could not reasonably be expected to know whether or not such authorisation was formally recorded in the Committee's resolutions. He submitted that the Appellant could only go by the representations made to her by the responsible officers of the Club, which in this case were the CEO and Secretary, who clearly conveyed that she could make the balance payment in installments. He

submitted that in such a situation, the principle of indoor management would squarely apply, and the Club was estopped from asserting to the contrary.

16. Mr. Cama then placed reliance upon the judgment of Hon'ble Supreme Court in the cases of *B. L. Sreedhar and others vs. K.M. Munireddy (Dead) and others*³ and *Tata Iron and Steel Co. Ltd. vs. Union of India*⁴ in support of his contention that when a party makes a representation by his act or omission causing the opposite party to act upon such representation and alter its position, then neither the party making the representation nor the representative of such party would be allowed in any suit or proceeding to deny the truth of such representation.

17. He further submitted that Section 115 of the Indian Evidence Act, 1872, clearly enshrines the principle of estoppel by conduct, which prohibits a party from resiling from a representation made to another, where the latter has relied upon it and altered their position to their detriment. In the present case, he submitted that the Club had, through its duly authorised and/or responsible officers, represented to the Appellant that the balance amount of Rs.49,00,000/- was payable 'in installments'. He then submitted that not only had the Appellant acted upon such representation, but so had the Club by

³ (2003) 2 SCC 355

⁴ (2001) 2 SCC 41

accepting the amounts paid by the Appellant without demur or protest. He further pointed out that the Club had levied interest on the deferred payments, which not only acknowledged the fact that the Appellant had been permitted to pay in installments but also clearly demonstrated that the Club did not consider the Appellant to be in breach of Article 17 by reason of making payment in tranches beyond the timeline stipulated therein.

18. Mr. Cama thus submitted that the Club, by its unequivocal conduct, had led the Appellant to believe that the membership fee could be paid in installments and, having accepted those payments without demur or protest and even imposed interest thereon, was now estopped from taking a stand contrary thereto. He thus submitted that the conduct of the Club squarely attracts the doctrine of estoppel under Section 115, and the Club cannot now be permitted to take a position contrary to the one it earlier represented and acted upon.

19. Mr. Cama also submitted that the Club's reliance on the term "EMI" was entirely misplaced and really a red herring. He submitted that the real question was not whether the payment mode conformed to a particular label such as "EMI", but whether the Appellant was, in fact, permitted to pay the membership fee in a mode other than a lumpsum payment. He submitted that the City Court had this aspect gravely erred in holding that "*..the plaintiff*

did not approach the defendant club and requested to accept balance of entrance fee by way of instalment/EMI, nor committee of defendant club has determined the method for making balance amount towards entrance fees in terms of rule 17 of articles of association.”. He submitted that such a finding in the facts of the present case was plainly perverse and contrary to the record since the Club had infact accepted the installments from the Appellant and even levied interest on the outstanding and thus left no room for doubt that such permission was granted.

20. Mr. Cama then submitted that the second ground of termination cited by the Club in its termination notice, i.e., that the Appellant had failed to comply with Article 10 of the Articles of Association by not submitting three golf scorecards, was equally misconceived. He submitted that the Trial Court erred in upholding this contention, especially since the allegation that the Appellant failed to submit three golf scorecards was never raised at any point from the date of the Appellant’s initial application and grant of temporary membership on 22nd December 2017 up to the issuance of the termination letter on 23rd July 2019. He also pointed out that the Appellant was never even given an opportunity to show cause as to why this was a plainly misconceived and untenable ground for terminating the Appellants membership.

21. He then submitted that the contention of failure to submit three golf cards was raised for the first time only in the notice dated 23rd July 2019, i.e., the Termination Notice), and was entirely untenable and malafide for the following reasons:

- (i) That the Appellant had in her application form dated 21st March 2018 expressly indicated that she was not a golfer by clearly circling “No” against “*Golfer: Yes/No*” on the Application form. Hence, the Appellant having declared herself as a non-golfer, the very requirement of submitting any golf scorecards would not arise.
- (ii) The Club had, with the full knowledge that the Appellant was a non-golfer, nonetheless processed her application for membership and conducted a ballot and proceeded to grant the Appellant provisional membership, thereby signifying waiver or inapplicability of the scorecard requirement in her case.
- (iii) The requirement under Article 10 to submit three golf scorecards was applicable only at the stage of considering the Application of a temporary member for permanent membership and not when considering a short-term member seeking conversion to permanent member. Also, this requirement is to

be fulfilled prior to balloting, and once a member is balloted and elected, as in this case, the condition, even if applicable, would cease to apply.

- (iv) In the present case, it is admitted and evident that the Appellant was duly balloted on 24th May 2018, and as reflected in the Club's email dated 25th May 2018 and the accompanying letter, she was informed that she had been accepted as a provisional member.
- (v) Provisional membership, in this context, indicated permanent membership, subject only to completion of certain formalities. It was not akin to temporary membership and therefore did not trigger the requirement for submission of golf scorecards under Article 10.
- (vi) A plain reading of Article 10 supports this interpretation. The phrase "*shall without ballot...*" in the first unnumbered paragraph of Article 10(a) clearly shows that the scorecard requirement applies only where a candidate is to be elected without a ballot. The third unnumbered paragraph of Article 10(a) then provides that if a candidate has submitted scorecards

or has met members and been balloted, the Committee may proceed to elect such a candidate as a permanent member. In the present case, the Appellant was duly balloted and elected, rendering the scorecard requirement irrelevant.

- (vii) The fourth unnumbered paragraph of Article 10(a) confers upon the Committee the discretion to waive these requirements. Thus, even assuming that submission of scorecards was required, the Committee's conduct, i.e., processing the Appellants membership, conducting the ballot, and confirming the Appellant as a provisional member, constitutes an implied waiver under Article 10, which cannot be reversed retrospectively.

Basis the above, Mr. Cama submitted that the Club's reliance on the non-submission of golf scorecards was not only unfounded in fact and law, but in fact perverse in light of the Club's own conduct and express communications.

22. He then further submitted that the Trial Court's reliance on this issue in paragraph 25 of the Impugned Judgement was wholly untenable, especially in holding that the Appellant's argument of waiver amounted to an

admission that the Appellant was required to submit three golf scorecards. He submitted that this reasoning was legally flawed, as a legal submission of waiver, even if made arguendo, cannot be construed as an admission of applicability or default.

23. Basis the above, he submitted that the Trial Court had erred both in law and on facts, and thus the impugned judgement must therefore be set aside.

Submissions on behalf of the Respondents

24. Mr. Sharma, Learned Counsel appearing on behalf of the Club at the outset, submitted that the Impugned Judgement was perfectly just and legal save and except the direction contained in paragraph 27 of the judgement which required the Club to refund the fees paid by the Appellant. He submitted that the Club had filed an Appeal to the limited extent of impugning this direction.

25. Mr. Sharma then submitted that membership of the Club, whether short-term, provisional, or permanent, was a contractual relationship which was governed strictly by the Articles of Association, the Bye-Laws of the Club, and the relevant notifications/circulars issued by the Club from time to time.

26. He then pointed out that the Trial Court had, in paragraph 25 of the Impugned Judgement, correctly interpreted Article 17 of the Articles of Association of the Club, which categorically stipulated the requirement of full payment of entrance fees at the stage of balloting. He submitted that the Trial Court had, after a careful appreciation of the evidence on record, arrived at a finding that the Appellant had failed to fulfill this condition.

27. Mr. Sharma then submitted that the Appellant's contention that the Club had extended an EMI or installment facility to the Appellant for making payment of the membership fees was factually and legally unsustainable. In support of his contention, he pointed out that (i) the Appellant had never sought any EMI Facility/Installment Facility and was thus never assigned the same; (ii) the Managing Committee being the competent authority to permit any EMI/installment facility had not passed any resolution authorising such EMI/installment facility to the Appellant; (iii) the Club had merely shared a chart of EMI options available by email dated 18.05.2018; however, the Appellant had never opted for payments by EMI and/or installment facility as offered by the Club; (iv) therefore was no contract between the Parties by which the Appellant was permitted to make payment of the membership fees by way of EMI and/or installment; and (v) thus, the Appellant was bound by Article 17 of the AOA and was required to make payment in terms thereof, i.e., within one

month from the date of election, if resident in India and three months if not resident in India. He submitted that since the Appellant had admittedly not done so, the Termination Notice was entirely valid and justified, and the Trial Court was right in dismissing the Suit.

28. Mr. Sharma then submitted that given the fact that the Appellant had never applied for an EMI/installment option nor had the Club ever granted an EMI/installment option to the Appellant, the Appellant was contractually bound to effect the entire membership fee in one tranche. He then pointed out that the Appellant was also intimated on several occasions of the balance amount payable towards her membership, despite which she did not make payment of the same. He submitted that despite this leniency on the part of the Club, which was taken for granted by the Appellant, the Club was compelled to issue the Termination Notice to the Appellant.

29. Mr. Sharma then submitted that the Appellant, having failed to demonstrate that any EMI/Installment Facility was extended by the Club, the Appellant has enjoyed the membership benefits by delaying payment of the membership fee under one pretext or another and has intentionally not exercised the EMI facility that was offered by the Club. He also then pointed out that the conduct of the Appellant was malafide since the Appellant had sought to make payment in installments by contending that *“with 4 kids studying*

privately in a high end school, it gets rather difficult to set aside a huge chunk of money for any other purpose other than their academics and healthcare”, however, the Appellant had in her cross examination made a statement that her business had a turnover of approximately 5 crores in the year 2017. He submitted that clearly the Appellant was not unable to make payment of the membership fee but had chosen not to do so. He further pointed out that after the interim order dated 9th September 2019 in the Second Suit was passed, the Appellant had infact made payment of the entire balance amount towards outstanding membership fees, further belying the Appellants contention that she was under any financial difficulty from doing so as demanded by the Club.

30. Mr. Sharma then pointed out that the termination even on the grounds of non-submission of three golf scorecards was also just and valid. He pointed out that the Appellant herself had accepted the fact that she had not submitted three gold score cards, as required under Article 10 of the AOA of the Club. He reiterated that the Appellant and the Club were bound by the AOA, and given the fact that the Appellant was in admitted breach of Article 10 of the AOA, termination on this ground was also entirely justified.

31. Basis the above, he submitted that there was no reason to interfere in the Appeal, save and except to the extent of refunding the amount paid by the Appellant towards the Membership fee, given the fact that the Appellant

had enjoyed the benefits of the Club for a prolonged period, close to five years, under the protection of an interim order passed in Notice of Motion No.3216 of 2019. He submitted that the amount was accepted by the BPGC only pursuant to the interim orders passed, and it was thus clearly on a without prejudice basis.

32. Mr. Sharma pointed out that since the Suit had been dismissed and the termination of the Appellants membership had been upheld, the amounts paid by the Appellant towards membership fees were liable to be forfeited under the Club Rules. In such circumstances, he submitted that, having upheld the termination, the Trial Court ought not to have directed a refund of the deposited amount since such an observation runs contrary to the very contractual regime which governed the parties' relationship, i.e., the AOA of the Club. Basis this, he submitted that the Appeal No.1567 of 2024 be dismissed and Appeal (L) No.2218 of 2024 be allowed.

33. After having heard Learned Counsel for the parties and having gone through the Impugned Judgment and the evidence on record, I have no hesitation in not only holding that the Club was wholly unjustified in terminating the Appellant's provisional membership but also that the Club's actions in doing so were accentuated by malafides. The reasons for saying so are as follows :

- A. On the aspect of whether the Appellant was permitted to make payment of her membership fee, there can, in my view, be no doubt that the Appellant was permitted to do so. This is evident from the following:
- i. In the Appellants email dated 13th April 2018, the Appellant explicitly requested the Club's permission to make payment in "lump sum tranches" since the income of the Appellant came from the United Kingdom and the Appellant had an annual cap on inward remittances and was also required to meet the other expenses *inter alia* in respect of four school-going children.
 - ii. Additionally, the Appellant, by way of the email dated 13th April 2018, also enclosed two cheques for Rs.10,00,000/- (ten lakhs) each payable on 2nd May 2018 and 1st December 2018, respectively, and for the balance requested time till March 2020, acknowledging and accepting that the same would attract interest and specifically agreed to bear such interest. Thus, clearly this letter was a request/proposal made by the Appellant to the Club for making deferred payment or payment in installments.

- iii. The Club, by its letter dated 2nd May 2018, enclosed with the email dated 3rd May 2018, specifically informed the Appellant that the "*balance amount payable 'in installments'*" was *Rs.49,00,000*. It is the Appellant's express case that Respondent No. 3 is a member of the Managing Committee of the Club. Thus, in my view, there can be no manner of doubt that the Appellant was informed by a member of the Managing Committee of the Club that the balance amount towards membership fees was payable in installments.
- iv. *Furthermore, and in my view crucially, neither the Club nor Respondent No. 3 has denied this letter or the authority of Respondent No. 3 to issue the same. Thus, the finding that the Appellant "did not approach the defendant club and requested to accept balance entrance fee by way of installments/EMI, nor committee of defendant club has determined the method for making of balance amount towards entrance fees in terms of rule 17 of article of association. The plaintiff has committed default in making payment towards entrance fees. ..." is plainly perverse and contrary to the record.*

- v. The Club, by its email of 17th August 2018, not only acknowledged the "outstanding amount" from the Appellant but also calculated interest thereon. Thus, making it clear that the Club had treated the amount due from the Appellant as a deferred payment, i.e., as an installment and not as a lump sum, which was due and payable forthwith.
- vi. The Club, on 1st December 2018, which was well after the Appellant was elected and balloted as a provisional member, also unreservedly accepted the payment of Rs.10,00,000/-, paid by the Appellant towards membership fees.

Thus, from the above, it is clear and beyond the pale of doubt that the Club had, all along, accepted payments from the Appellant towards the Appellants membership fees in lump sum tranches without any demur or protest and had never raised any dispute that the Appellant had not accepted the schedule of installments or that the payment in installments was not determined by the Managing Committee of the Club.

- B. *Additionally*, the Trial Court has also completely overlooked the following:

- i. That Article 17 of the AOA itself specifically provides that the Committee is authorised to accept payment of membership fees in installments.
- ii. That the Club in view of its conduct as noted above was estopped from contending that the Appellant was in breach of Article 17 of the AOA since the Club had in fact, not only accepted payment from the Appellant in installments, but had also levied interest on the balance amount. Thus, in my view, the Club cannot now, after benefitting from these payments and levying interest, deny the existence of such an arrangement. Hence, the judgement of the Hon'ble Supreme Court in the case of ***B. L. Sreedhar*** and ***Tata Iron and Steel Co. Ltd.***, upon which reliance was placed by the Appellant, would squarely apply.
- iii. Also, the Appellant, having received the letter dated 2nd May 2018, enclosed with the email dated 3rd May 2018 which was signed by Respondent No.3, would be right in assuming that the same was issued after all the necessary internal procedural compliances of the Club's General Committee had been taken. As already noted above, neither the Club nor Respondent No. 3 have

in any manner denied the letter dated 2nd May 2018 or the authority of Respondent No.3 to issue the same. Thus, the Appellant is entitled to rely upon the communication dated 2nd May 2018 as an acceptance of the Appellants request/proposal as contained in the Appellant's email dated 13th April 2018, and hence any alleged absence of a formal resolution is an internal matter of the Club and cannot prejudice the Appellant.

- C. The reason why I find that the action of the Club is accentuated by mala fides is because:
- i. The Club, for the first time, after a year of addressing the letter dated 2nd May, 2018, called upon the Appellant to make payment of the entire outstanding amount towards membership fees in one shot.
 - ii. Despite the fact that the Appellant had declared herself as a "non-golfer" in her application form dated 21st March 2018, the Club, for the first time in the termination notice dated 23rd July 2019, sought to terminate the Appellants membership on the ground that the Appellant was in breach of Article 10 of the articles of association by contending that the Appellant had failed to submit three score cards.

- iii. The Appellant was never granted an opportunity to show cause or deal with the contents of the termination notice.
- D. Even on merit, Article 10 of the AOA would not be applicable in the present case since Article 10 itself, *inter alia*, provides as follows:

"the application of every candidate for election as a Permanent Member shall be submitted to a meeting of the Committee and if approved by the Committee, such candidate shall without ballot be declared to be elected as a Temporary Member for a period of not more than six months in the first instance, during which time the candidate will be entitled to all the privileges and amenities of a Temporary Member and shall be required to submit not less than three Score Cards in respect of rounds of Golf played by him on a Club Course".

Hence, the phrase "*shall without ballot*" indicates that the requirement to submit three scorecards is mainly intended for evaluating applications, particularly in the election of a member conducted without a ballot.

- E. In the present case, the Appellant was *duly balloted and elected* as a provisional member on 24th May 2018, which was well before this condition was imposed upon the Appellant. Thus, even assuming there was any such requirement, the same was clearly waived once the appellant was duly balloted and granted provisional membership of the club. Hence, the condition for the

submission of three golf scorecards, even if applicable, would cease to apply after the Appellant was balloted and accepted as a member of the Club.

- F. *Further*, Article 10(a) itself grants the Committee discretion to waive the requirements of submitting three score cards. The Club's conduct in the present case, as noted above, of processing the Appellants membership Application on the basis that she was a non-golfer and granting the Appellant provisional membership after ballot makes implicitly clear that the Club had exercised this discretion and had waived this requirement.
- G. The Trial Court's reasoning that the Appellant's argument of waiver amounted to an admission that the Appellant was in breach of the obligation to submit three golf scorecards is legally flawed. It is well settled that a legal submission of waiver, even if made *arguendo*, cannot be construed as an admission on the part of the Appellant.

34. Hence, for the aforesaid reasons, Appeal No. 1567 of 2024 is allowed, and Appeal (L) No. 22218 of 2024 is dismissed. All interlocutory applications, if any, shall stand disposed of accordingly.

(ARIF S. DOCTOR, J.)