

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

FIRST APPEAL NO.1568 OF 2024

IN

SUIT NO.3054 OF 2018

WITH

INTERIM APPLICATION NO.12343 OF 2024

IN

FIRST APPEAL NO.1568 OF 2024

Sucheta Desmond Rodrigues

Bungalow Amaay, Union Park,

Chembur (East), Mumbai – 400055.

... Appellant

(Orig. Plaintiff)

V/s.

1. The Bombay Presidency Golf Club Limited

Having address at Dr. Choitharam Gidwani Road,

Chembur, Mumbai 400074.

2. V. S. Rajan,

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)

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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. The Appellant in this First Appeal is the Plaintiff in the captioned Suit. Respondent No. 1 is the Bombay Presidency Golf Club Limited, which is incorporated and registered under the Indian Companies Act, 1956 (**“the Club”**), and Respondent Nos. 2 and 3 are the President and Secretary & Chief Executive Officer of the Club, respectively.

2. The Appellant had filed the captioned Suit *inter alia* seeking a declaration that the two children, namely, Amoorth Dayanand Shetty (**“Amoorth”**) and Aadhyaa Dayanand Shetty (**“Aadhyaa”**), are entitled to enjoy all rights and privileges of the membership of the Appellant with the Club. Amoorth and Aadhyaa are hereinafter collectively referred to as **‘the Wards’**.

3. The Trial Court, however, vide a judgement dated 5th July 2024 (**“the Impugned Judgement”**), dismissed the captioned Suit.

4. It is thus that the present First Appeal has been filed.

5. However, 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 the Appellants biological children, and Amoorth and Aadhyaa, who were the children of the Appellant’s predeceased sister, one Sheetal Dayanand Shetty, and in respect of whom the Appellant and her brother, one Rajkiran Shetty, had been appointed legal guardians vide an order dated 7th April 2017 passed by the Bombay City Civil Court in Guardian Petition No. 3 of 2016.
- ii. The Appellant thereafter applied for permanent membership (category B/Life) for herself, and in the form, she mentioned the names of all four children under “Family Details”. The Appellant annexed the following documents to the Application Form (a)

the Appellant's passport, (b) the birth certificates of all four children, (c) the death certificate of the Appellant's sister and (d) the Order dated 7th April 2017 appointing the Appellant and the Appellant's brother.

iii. The Appellant then vide an email dated 13th April 2018, stated that she had made payment of Rs. 6,18,760/- towards her membership of the Club in December 2017 and requested the Club to allow her to make payment of the balance fees in instalments, and proposed the following: (i) payment of Rs. 10,00,000/- on 2nd May 2018 (in respect of which she had already deposited a post-dated cheque with the accounts department of the Club 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 balance amount she requested time until March 2020.

iv. The Club then, on 3rd May 2018, invited the Appellant and her proposer to attend the ballot meeting which was scheduled for 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 instalments*' was Rs. 49,00,000/-.

- v. The Club then, vide an email dated 18th May 2018, enclosed certain EMI options, which stipulated that the payments could be made in instalments between 1 to 4 years and interest would be levied thereon at the rate of 15% per annum.
- vi. On 25th May 2018, post the balloting, the Appellant was conferred with her provisional membership, subject to the completion of necessary compliances for her permanent membership. The Appellant and all four children were issued their respective membership cards and were permitted to use the facilities of the Club.
- vii. The Club then, on 14th September 2018, addressed a letter to the Appellant cancelling the membership of the Wards *inter alia* on the ground that the Club had, while processing admission applications, missed the distinction between adoption and guardianship and had inadvertently admitted the Wards and issued them ID cards. The Club stated that since the Wards were not the Appellant's 'real' or 'adopted' children, and

the Appellant was merely their guardian, they could not have been admitted as dependents as per the Articles of Association (“AOA”) of the Club.

- viii. Challenging this termination of the Wards’ membership, the Appellant then filed the captioned Suit and sought a declaration that the Wards were entitled to enjoy the rights and privileges of the Appellant’s membership with the Club as her dependents.
- ix. On 13th November 2018, the Appellant took out Notice of Motion No. 4310 of 2018 in the captioned Suit *inter alia* seeking to restrain the Club from preventing the Wards from entering and participating in the Club events.
- x. On 6th March 2019, the City Court granted an injunction in terms of prayer clause (a) of Notice of Motion No. 4310 of 2018 in the captioned Suit and directed the Club to maintain status quo of the Wards' use of the Club and restrained the Club from taking any coercive action against the Appellant and the children. By the said Order, the City Court also *prima facie* observed that the bye-laws did not differentiate between biological children, adopted children and wards.

- xi. The Club then, on 21st April 2019, sent the Appellant an email enclosing a letter dated 18th April 2019 that stated that 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.
- xii. The Appellant, on 23rd April 2019, met one Manish Kulkarni, an accounts executive of the Club, for a clarification as to the balance amount payable. The Appellant vide an email of the same date, informed the Club that the Appellant had thus far made payment towards membership fees which exceeded Rs. 26,00,000/-. The Appellant also reiterated that while the Club had offered every member a three-year instalment option/plan to pay the membership fees, the Appellant had in less than one year made payment of approximately 50% of the membership fees. The Appellant thus requested the Club to verify the accounts and resolve the matter. She 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.

- xiii. The Club then, by a letter dated 23rd July 2019, informed the Appellant that she was in breach of Article 10 of the AOA and also called upon the Appellant to make payment of the sum of Rs. 41,56,526/- towards balance entrance fees along with interest payable thereon by 31st July 2019, failing which the Appellant's provisional membership would stand terminated and all part payments made by the Appellant towards the membership fees would stand forfeited.
- xiv. The Appellant responded to the Club's letter on 25th July 2019 and called upon the Club to withdraw the letter dated 23rd July 2019, *inter alia*, stating that same was a counterblast to the interim order dated 6th March 2019.
- xv. The Club then, vide its letter dated 28th July 2019, reiterated the contents of the letter dated 23rd July 2019 and for the first time contended that the Club had never accepted the Appellant's proposal to pay the membership fees in instalments nor had the Club ever extended such an offer for the payment in instalments to the Appellant. The Club thus demanded that the Appellant make payment of the sum of Rs. 41,56,526/- within

three days, i.e., by 1st August 2019, failing which the Appellants membership would be terminated.

xvi. The Appellant then, on 20th August, 2019, filed Suit No. 3262 of 2024 (**“the Second Suit”**), *inter alia*, seeking (i) a declaration that she is entitled to make the balance payment of the fees towards the membership of the Club in instalments; (ii) specific performance of a contract entered into between the Appellant and Respondents; and (iii) a permanent injunction restraining the Club from unilaterally/arbitrarily terminating the membership of the Appellant.

xvii. On 9th September 2019, the City Court in Notice of Motion No. 3216 of 2019 in the Second Suit passed an order in terms of prayer clause (b) of the said Notice of Motion, subject to the Appellant making payment of the entire outstanding amount inclusive of interest within a period of eight weeks from the date of the said order. It is not in dispute that the Appellant made payment of the said amount within the prescribed time.

xviii. On 20th October 2023, this Court dismissed a challenge to the interim order by expediting the hearing of the Suit.

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

“25. ... In this circumstances the plaintiff cannot take benefit of order passed in guardian petition no. 3/2016 to substantiate that Master Amoorth and Ms. Aadhya are entitled to avail club facilities. It is noteworthy to see that the plaintiff has also declared Master Amoorth and Ms. Aadhya as her son and daughter respectively in membership form. From the said conduct, it is seen that the plaintiff was well aware that the wards are not entitled to avail the club facility, therefore, she declared them as her son and daughter respectively. The memorandum of articles of association and bye-laws of the club do not permit wards to avail the right and privileges of the membership of the plaintiff.

26. The plaintiff herself has declared Master Amoorth and Ms. Aadhya as her son and daughter respectively. The plaintiff in her oral evidence has categorically admitted her relationship with Amoorth and Ms. Aadhya. Despite knowing the relationship, the plaintiff gave incorrect declaration in membership form. Therefore, the claim of the plaintiff that defendant club is estopped from denying the right of Master Amoorth and Ms. Aadhya cannot be accepted for the reasons that the promise was based on the false declaration made by plaintiff in the membership form. ...”

Submissions on behalf of the Appellant.

6. Mr. Cama, Learned Counsel appearing on behalf of the Appellant, at the outset submitted that the grounds on which the Trial Court had disposed of the captioned Suit were entirely untenable and lacking merit. Dealing with the contention that the Appellant had incorrectly declared the Wards as her ‘son’ and ‘daughter’ in her Membership Application Form dated 21st March 2018 (**“Application Form”**), Mr. Cama submitted that there was no

misrepresentation or incorrect declaration on the part of the Appellant as claimed by the Club since the Appellant had admittedly submitted the following documents alongwith her Application Form.

- i. The passport copies of all four children, which showed the names of the parents of the Appellants' biological children, i.e., Amaaya and Joshua, as Sucheta Rodrigues and Desmond Rodrigues whereas the names of the parents of Amoorth and Aadhyaa were shown as Sheetal Shetty and Dayanand Shetty.
- ii. The birth certificates of all four children from which the name of the mother of Amoorth and Aadhyaa was recorded as Sheetal Dayanand Shetty.
- iii. The death certificate of Sheetal Dayanand Shetty.
- iv. A copy of the order dated 7th April 2017 (**"Guardianship Order"**) passed by the Bombay City Civil Court in Guardian Petition No. 3 of 2016, whereby the Appellant and her brother had been appointed legal guardians of Amoorth and Aadhyaa.

7. He then submitted that in light of the fact that all these documents were submitted, and along with the Appellants Application Form, the question of any misrepresentation or suppression on the part of the Appellant did not arise. He submitted that the Appellant, having submitted all of the above, it

would be facile to contend that the Club did not scrutinise or even cursorily look at the documents before granting the Appellant and her dependents provisional membership and issuing all of them identity cards.

8. Mr. Cama then placed reliance upon the cross-examination of the Club's witness, i.e., Mr. Shekhar Gupta, and pointed out that Mr. Gupta had infact admitted that the Appellant had been granted provisional membership after scrutiny of the Guardianship Order. He argued that the Club's admission was vital to show that the Club had not issued the identity card to Amoorth and Aadhyaa based on any misrepresentation or confusion on the part of the Appellant.

9. Mr. Cama then pointed out that the Trial Court had, after noting the above admissions by the Club's witness, categorically held in paragraph 23 of the Impugned Judgement as follows:

"...In this back drop the contention of Defendant that plaintiff misrepresented or made mis-declaration regarding her relation with Amoorth and Achya cannot be accepted..."

10. Mr. Cama then pointed out that despite the above finding, the Trial Court in paragraph 26 of the Impugned Judgement, in complete contradiction of the above findings, went on to hold as follows:

“Despite knowing the relationship, the plaintiff gave incorrect declaration in membership form. Therefore, the claim of the plaintiff that defendant club is estopped from denying the right of Master Amoorth and Ms. Aadhya cannot be accepted for the reasons that the promise was based on false declaration made by plaintiff in the membership form...”

11. Mr. Cama took pains to point out that not only were the above findings plainly contradictory, but they were also plainly perverse and rendered the Impugned Judgement to be set aside on this ground alone.

12. He then took pains to point out that the two letters dated 14th September 2018 addressed by the Club to the Appellant, whereby the Club cancelled the Wards’ membership as dependents of the Appellant, never alleged any misdeclaration or misrepresentation on the part of the Appellant. On the contrary, he pointed out that the two letters proceeded on the basis that the Appellant was the legal guardian of the Wards and that the Club had inadvertently missed the distinction between “guardianship” and “adoption” while processing the applications.

13. He then pointed out that the Club had expressly, albeit incorrectly, stated that the Bye-Laws only permitted “real and adopted children” as dependents as the reason for cancelling the Wards’ memberships. He submitted that it is evident that not only was the Club well aware of the Appellants

relationship with all four before granting the Appellant and all four children provisional membership, but also that the Club had, vide their letters dated 14th September 2018 admitted that there was an error (if any) on the part of the Club. He then argued that having scrutinised the documents and being well aware of the facts prior to the granting of membership, the Club was now estopped from claiming that the Club was not aware or that the Appellant misrepresented the relation between the Appellant and Amoorth and Aadhyaa.

14. He then argued it was trite law that to constitute a misrepresentation, there had to be wilful intention to cause confusion, which in the present case was absent. He submitted that merely using the words ‘son’ and ‘daughter’ on the cover page of the standard format Application Form was not in any manner dispositive of, or evidence of, any misrepresentation. The documents annexed with the covering page of the Application Form, clearly evidenced that Amoorth and Aadhyaa were wards, and admittedly, the Club had, in fact, scrutinised these documents prior to granting membership. He further pointed out that the Appellant had, in her cross-examination, clarified that the reason she used the words ‘son’ and ‘daughter’ was because “... *she never treated Aadhyaa and Amoorth as wards...*”. He thus submitted that there was no misrepresentation or misdeclaration, and the finding in paragraph 26 of the Impugned Judgement was therefore perverse and required to be set aside.

15. Mr. Cama then, with respect to the contention of the Club and the finding of the Trial Court that since Aadhyaa and Amoorth were wards of the Appellant, they could not be admitted as 'dependent children' of the Appellant as per the Bye-Laws submitted that the question to be considered was not whether the Bye-Laws of the Club permitted a Ward to be considered a Dependent member but whether the Bye-Law precluded or prohibited a Ward from being treated as a Dependent. He submitted that since there had been no suppression on the part of the Appellant, the onus lay entirely on the Club to prove that the Bye-Laws or the AOA of the Club precluded or prohibited a Ward from being considered as a Dependent.

16. He then pointed out that there was nothing contained in the Bye-Laws or AOA of the Club that made a distinction between a ward and a natural-born child, nor was there a bar to a ward being treated on par with a natural born child. He pointed out that this fact has also been admitted by the Club's witness, i.e., Shekhar Gupta, during his cross-examination, where he had stated, *"It is true that the word 'child' is not defined in the memorandum, articles of associations. No distinguish is made between biological child and ward."* He thus submitted that the Club having admitted that there was no difference between a biological child and a ward had failed to prove that the

Bye-Laws or AOA of the Club precluded wards from being considered as Dependents.

17. Mr. Cama further argued that once the Club had admitted that there was no prohibition in the Bye-Laws or AOA to a ward being admitted as a Dependent, the next question that ought to have been considered and addressed was whether a ward must be treated at par with a natural-born child. He then placed reliance upon the judgement of the Hon'ble Supreme Court in the case of *Nanak Chand Vs. Chandra Kishore Aggarwal and ors.*¹, to submit that that the term "child" can have at least two distinct meanings, depending on its context. He explained that when "child" refers to parentage, age is irrelevant. However, in contexts where "child" implies a connection to age (as he argued was the case here), it becomes immaterial whether the individual is a natural-born, biological, adopted, step-child, or even a ward. In such instances, he contended, the sole crucial factor is that the individual is below the specified age limit.

18. He thus submitted that in the facts of the present case, the word 'child' or 'children' was only a term used to describe a male under the age of 21 or a female who is unmarried. The term 'child' or 'children' in terms of the Bye-Laws of the Club, therefore, had no relation to parentage and were only

¹ (1969) 3 SCC 802

indicative of the age at which the dependant would become eligible to convert to a regular member. Hence, it was irrelevant whether the child was a natural-born or adopted child, or a stepchild, or a ward, and it would be incorrect to state that the Bye-Laws or articles in any manner intended for the meaning to be restricted to a biological or adopted child.

19. He then argued that the term ‘child’ is used to refer to a non-adult, independent of parentage, and has received legislative recognition in various statutes. He first pointed out from the Right of Children to Free and Compulsory Education Act, 2009 (**“RTE Act”**), that ‘child’ had been defined in that Act to mean a person who is aged between 6 and 14 years² and had nothing to do with whether they were biological children or otherwise. Relying on Sections 2 (c)², 2 (e)³, 2 (g)⁴ and 3⁵, of the RTE Act, he submitted that the Act had used the word ‘child’ in the context of both a ‘parent’ and a ‘guardian’ and hence clearly intended the word ‘child’ to include ‘wards’. He argued that this clearly evidenced the fact that even the legislature did not contemplate any qualitative difference between a ‘ward’ and a ‘child’, and that both were to be

² (c) “child” means a male or female child of the age of six to fourteen years;

³(e) “child belonging to weaker section” means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;

⁴ (g) “guardian” in relation to a child, means a person having the care and custody of that child and includes a natural guardian or guardian appointed or declared by a Court of a statute;

⁵ **3. Right of child to free and compulsory education** – (1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or (e) of Section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education. ...

treated at par. He further pointed out that Section 2(g)⁶ of the RTE Act expressly included both natural guardians and Court appointed guardians within the meaning of the term ‘guardian’.

20. He then placed reliance upon Article 51A(k)⁷ of the Constitution of India to submit that even the Constitution equated ‘parents’ at par with ‘guardians’ and ‘children’ at par with ‘wards’. He thus submitted that as per Article 51(A)k of the Constitution, "parents" and "guardians" were placed on an equal footing and thus necessarily equated "children" with "wards". He submitted that thus it was clear that there was legal parity between a child and a ward even under the Constitution.

21. Mr. Cama then relied on Section 4(2)⁸ of the Guardians and Wards Act, 1890, to submit that the legislation itself defined ‘guardian’ as a person having the care of the person of a minor or his property or both. Therefore, the word ‘dependent’ only means a person who relies upon another for their sustenance and survival. In the context of the rules of the Club, the word ‘dependent’ could hence apply equally to adopted children or wards who,

⁶ supra n4

⁷ **51A. Fundamental duties.**—It shall be the duty of every citizen of India— ...

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

⁸ **Definitions.**— In this Act, unless there is something repugnant in the subject or context,— ...

(2) "guardian" means a person having the care of the person of a minor or of his property, or of both is person and property;

by court appointment or court fiat, are made the legal dependent of the member, as it did to a naturally born child who is by birth dependent upon a member.

22. Mr. Cama then pointed out that on 24th April 2021, while the interim orders were in force and while the membership of the Wards was upheld at the interim stage, Amoorth turned 21 years of age and became eligible to apply for permanent membership. Accordingly, the Appellant addressed an email dated 30th March 2022 to the Club seeking information on the process to be followed and copies of the necessary forms to be completed and submitted to convert his dependent membership to a main membership. However, since the matter was sub-judice, the Club stated that the application for conversion of dependent membership to main membership could not be permitted and that the Amoorth could apply for an independent membership if he so desired.

23. Mr. Cama then took the pains to point out that the Club had, despite its Rules recognising only real or adopted children as being dependents, had infact admitted as members those dependents who were neither real or adopted children of the members of the Club. He pointed out that the Respondent's witness, i.e., Mr. Shekhar Gupta, had in cross-examination

admitted that one Edward Colaco, who was neither the adopted nor natural born child of a member of the Club, namely, Wing Commander Chris Chatterjee, was granted membership of the Club, upon attaining the age of 21, in the capacity of an erstwhile Dependent member of Wing Commander Chris Chatterjee. Similarly, he pointed out that in the context of one Sameera Patel, her mother, i.e., Supriya Patel, had married a member, i.e., Shailesh Patel, and although Sameera Patel was neither the biological daughter nor the adopted daughter of Shailesh Patel, she was admitted as a member of the Club after the demise of Shailesh Patel. He thus submitted that it was clear that the Club always understood that the Bye-Laws did not preclude a child who is not the natural born or adopted child of a member from being made a dependent member of the Club.

24. Mr. Cama then submitted that the Trial Court had erroneously found in favour of the Respondent's argument that the Wards' guardianship ceased by virtue of Section 41⁹ of the Guardians and Wards Act, 1890, upon Amoorth and Aadhyaa attaining the age of 18 as a factor which would disentitle the Wards from being construed as Dependants for the purpose of

9 41. Cessation of authority of guardian.— (1) The powers of a guardian of the person cease— (a) by his death, removal or discharge; (b) by the Court of Wards assuming superintendence of the person of the ward; (c) by the ward ceasing to be a minor; (d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or (e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court. ...

membership. He submitted that as per Section 3¹⁰ of the Majority Act, 1875, every person domiciled in India attains the age of majority, which is 18, be it a natural born child or a ward. He submitted that if the argument of the Respondent was to be accepted, it would imply that no natural-born child would ever be eligible to apply for membership after having turned 18, notwithstanding the fact that under the Club's rules they continue to be a dependent member of the club until the age of 21, in the case of a son, or until they marry, in the case of a daughter.

25. He then pointed out that the application of Edward Colaco, as referred to above, for conversion of dependent membership to main membership was only made, and accepted by the Club, after he attained the age of 21. He thus submitted that the attainment of the age of majority had no relevance to the Club's Rules, and the only relevant criteria to be considered a 'dependent child' would be attaining the age of 21 or marriage, as the case may be. Thus, such an argument of the Respondent was illogical and entirely untenable.

10 3. Age of majority of persons domiciled in India. —(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. ...

26. Basis the above, he submitted that the Impugned Judgement, being entirely perverse, be quashed and set aside.

Submissions on behalf of the Respondents

27. Mr. Gaurav Sharma, Learned Counsel appearing on behalf of the Respondents, at the outset pointed out that the Appellant had in the Application Form made a wilful and deliberate false declaration that Amoorth and Aadhyaa were her 'son' and 'daughter', respectively. He submitted that Amoorth and Aadhyaa were admittedly not the Appellants 'son' and 'daughter', nor were they the adopted or stepchildren of the Appellant. He thus submitted that the declaration made by the Appellant was a false declaration, on the basis of which the Club addressed the letters dated 14th September 2018 cancelling the membership of Amoorth and Aadhyaa.

28. He then submitted that by applying for the membership of the Wards by describing them as the Appellant's dependents, the Appellant was trying to unjustifiably enrich herself to the extent of Rs. 3,50,000/- per ward per year from 2017 till they attained majority, amounting to approximately Rs. 49,00,000/-. This, he submitted, was a clear misrepresentation on the part of the Appellant and a misuse of the Guardianship Order. He pointed out that one of the preconditions of the Guardianship Order was that the guardians, including

the Appellant, would not misuse the said Order. He further argued that the legal distinction between 'child' and 'ward' could not be interpreted as synonymous for the purpose of illegally enriching oneself.

29. He argued that when the Appellant was admitted to the club as a short-term member, the letter informing her of her admission also required her to fill out a form with details about her family members for the purposes of issuing the identity cards. He pointed out that the letter specifically defined family members as including only spouses, sons under 21, and unmarried daughters. He submitted that given that the letter left no ambiguity, under no circumstances could the names of Amoorth and Aadhyaa have been included. He further submitted that when the Appellant applied for the permanent membership, the Appellant listed Amoorth and Aadhyaa as 'son' and 'daughter', respectively, despite the fact that they were her Wards.

30. He then pointed out that the Application Form required the Appellant to make a declaration stating that the details submitted by the Appellant were true and correct and that if the Appellant was found guilty of misconduct or infringing any of the club rules, the management could take any action it deemed fit and that such a decision of the Club would be binding upon the Appellant. He submitted that the Appellant, having made a false declaration,

the Club was fully justified in terminating the membership of Amoorth and Aadhyaa. He further submitted that the Appellant's statement was a fraudulent misrepresentation and that it was settled law that fraud vitiates even a solemn instrument, which he submitted was the Application Form in the present case, and accordingly, the same deserved to be discarded and cancelled.

31. He then submitted that since Amoorth and Aadhyaa had both attained the age of majority, the Appellant and her brother had ceased to be their guardians in terms of the Guardianship Order. Accordingly, this present Appeal has become infructuous for all intents and purposes, and accordingly, it was not maintainable. He then submitted that Amoorth, being born on 24th April 2000, was 17 years and 11 months on 21st March 2018, i.e., the time the Appellant made the application for permanent membership, and by the time the Appellant was granted provisional membership on 27th July 2018, Amoorth had already become a major and thus could never have enjoyed the benefits of the Club as a dependant.

32. He further argued that the Trial Court had correctly dismissed the captioned Suit on the basis that the Wards having attained the age of majority on 24th April 2018 and 18th February 2022, were no longer 'dependent children' of the Appellant and hence could not continue to enjoy the privileges of the Club through the Appellant.

33. He further submitted that the terms and conditions of both temporary and permanent membership forms, as also the Bye-Laws or regulations of the Club, do not permit a ‘ward’ of a member to be considered as their son or daughter, as a ‘ward’ is not the child of either spouse member, and more particularly when the terms ‘guardian’ and ‘ward’ are well defined under Section 4(2)¹¹ and Section 4(3)¹² respectively, of the Guardians and Wards Act, 1890. Therefore, on a plain reading of the definitions, the Wards, who were also the niece and nephew of the Appellant, could not have been addressed as ‘daughter’ and ‘son’.

34. He then relied upon Bye-Law No. 7 of the Club, which reads as follows:

“7. SUCCESSION OF CLUB MEMBERSHIP

Club Membership of a permanent member will devolve to member’s spouse after the death of the member, Dependent children of the member will be permitted to utilize all the facilities of the Club, as they were entitled to, during the life time of the deceased member, subject to the proviso that subscription Levies and revision thereof will be continued to be paid by the spouse. However the spouse shall have no voting rights.

Deceased member’s children on attaining 21 years of age shall eligible for permanent membership as per rules applicable to member’s children.”

¹¹ supra n8

¹² **4. Definitions.**— In this Act, unless there is something repugnant in the subject or context,— ... (3) “ward” means a minor for whose person or property, or both, there is a guardian;

Basis the above, he submitted that the Bye-Laws clearly envisaged that the membership of only a permanent member could devolve upon the spouse and dependent children of such permanent member, that too upon the death of the permanent member. He thus submitted that the Appellant being alive and only a provisional member could not seek the benefit of Rule 7. He thus submitted that Amoorth and Aadhyaa could never have been permitted to use the Club by taking recourse to Bye-Law No. 7, as they had been permitted to do by way of the order of injunction dated 6th March 2019.

35. He then submitted that the Club was not under any contractual obligation to grant membership to the Wards, who were admittedly the children of the Appellant's deceased sister. Furthermore, since the Appellant's own membership would cease due to her fraudulent misrepresentation, she couldn't enforce any consequential rights even assuming Amoorth and Aadhyaa were Dependents.

Reasoning.

36. After having heard Learned Counsel for the Parties and having considered the rival contentions, in my view the following two questions really arise for determination.

- 1) Whether the Appellant made a misrepresentation or false declaration regarding the Wards' relationship with the Appellant; and
- 2) Whether the Club's Bye-Laws or AOA specifically preclude or prohibit a 'ward' from being considered a 'dependent child' for the purpose of Club membership.

37. I shall now proceed to deal with and answer the first question as follows :

- A. On the aspect of misrepresentation and false declaration, while the Trial Court has in paragraph 26 of the Impugned Judgement, *inter alia*, held that the Appellant was estopped from claiming that the Wards were entitled to enjoy the privileges of her membership, as such membership was granted on the basis of a false declaration, it is to be noted that the Trial Court has in paragraph 23 of the Impugned Judgement, after appreciating the evidence on record, held as follows:

“23. ... It has come in the evidence of DW-1 Shekhar that the Plaintiff has tendered order of City Civil Court appointing plaintiff as a guardian of Amoorth and Aadhya along with her application. He further admits that membership to the plaintiff was granted after scrutiny. Therefore from the evidence on record, it is proved that the plaintiff has recorded all the details

in her membership form. The relation of plaintiff with Ms. Amoorth and Aadhya is of maternal aunt. The plaintiff has categorically admitted the said fact in her oral evidence. Admittedly master Amoorth and Ms. Aadhya is not the son and daughter of plaintiff. However, she has recorded Amoorth and Aadhya as her son and daughter in membership form. During oral evidence, she explained the reason for recording Amoorth and Aadhya as her son and daughter and deposed that she never treated Amoorth and Aadhya as her wards. The said statement of plaintiff that she never treated Amoorth and Aadhya as her wards that self is not sufficient to term Amoorth and Aadhya as her son and daughter respectively. The relation of plaintiff with Amoorth and Aadhya is of of maternal aunt. However, the DW-1 Shekhar admits that membership of plaintiff was granted after scrutiny. Admittedly the plaintiff has also tendered order of a Court appointing her as a guardian of Amoorth and Aadhya before the defendant club. In this backdrop the contention of defendant that plaintiff mis-represented or made mis-declaration regarding her relation with Amoorth and Aadhya cannot be accepted. The full name of Amoorth and Aadhya with their surname is recorded in the member ship form."

Thus, despite the fact that the Trial Court, based on the evidence on record, rendered a detailed finding that there was no misrepresentation or misdeclaration by the Appellant, the Trial Court has inexplicably thereafter held that the Appellant made a false declaration. These contradictory and self-defeating findings are plainly perverse.

- B. A perusal of the evidence on record leaves no manner of doubt that the Appellant had, in her Application Form, disclosed the full names of the Wards, which itself indicated they had a

surname different from the Appellant. Furthermore, the Appellant had also annexed to the Application Form (i) Her passport (ii) the birth certificates of all four children, including Amoorth and Aadhyaa, which clearly name Sheetal Dayanand Shetty as their mother; (iii) the passports of Amoorth and Aadhyaa, which also clearly identified Sheetal Shetty and Dayanand Shetty as their parents; (iv) the death certificate of the Appellant's sister, i.e., Sheetal Dayanand Shetty; and (v) the Order dated 7th April 2017 appointing the Appellant and her brother as the legal guardians of the Wards. Therefore, in light of this, merely because the Appellant listed Amoorth and Aadhyaa as her 'son' and 'daughter' under "family details", it cannot be said that the Appellant made a false declaration. It would have been an entirely different matter if the Appellant had not annexed the relevant documents to the Application Form or had falsely represented that Amoorth and Aadhyaa were the Appellant's biological children, which is, however, admittedly not the case.

- C. *Crucially*, the Club's witness, Mr. Shekhar Gupta, has in his cross-examination expressly and fairly admitted that *"I had*

seen order of court appointing plaintiff as guardian for Amoorth and Aadhya casually..." and thereafter admitted that *"Membership was granted after scrutiny..."*. Thus, the Club, having admitted that it was only after scrutiny of the documents submitted by the Appellant that membership cards were issued to the Appellant and the children, cannot allege any false declaration on the part of the Appellant. If any objection was to have been taken by the Club, it should have been at the stage of scrutiny and not after membership cards were issued to the Appellant and the four children. The Club's own evidence bears out that the Club was fully aware of and conscious of the fact that Amoorth and Aadhyaa were not the biological or adopted children of the Appellant but were the Appellant's Wards, and being fully conscious of this fact, the Club issued them membership cards.

- D. *Equally crucial* is the fact that the letters dated 14th September 2018, by which the Club cancelled the Wards' membership, do not mention or proceed on the basis that the Appellant had made any misdeclaration or misrepresentation. The letter proceeds solely on the basis that the *"distinction between*

adopted/guardianship was lost out and ID cards were issued inadvertently, which is being rectified now". Thus, it is clear and beyond the pale of doubt that the Club had itself admitted/accepted that (i) there was no misdeclaration on the part of the Appellant and (ii) the error/omission was on the part of the Club. Also, the Club's contention that the AOA/Bye-Laws only permitted "*real and adopted children*" as dependents, even if assumed to be correct, makes clear that the Club's concern was in respect of the legal status of the Wards and not qua any alleged misrepresentation by the Appellant.

- E. Though the Appellant has undeniably, in the Application Form, used the term 'son' and 'daughter' in family details to describe Amoorth and Aadhyaa, such description, in my view, in the facts of the present case, cannot be said to be a wilful misrepresentation made with the intention of deceiving the Club. This is because, as already noted above, the Appellant had (i) admittedly annexed to the Application Form all the relevant material disclosing that Amoorth and Aadyaa were not her biological children but were her Wards and (ii) the Application Form and the documents annexed were scrutinised

by the Club, after which membership was granted to the Appellant, and all four children were issued membership cards.

- F. Thus, for all the aforesaid reasons, I have no hesitation in holding that there was no misrepresentation or false declaration made by the Appellant in the Application Form and certainly not of the nature that would warrant cancellation of the membership of the Wards. This is especially so because the cancellation of the membership was based on the Club's interpretation of its Bye-Laws regarding the interpretation of 'child' and 'ward' and not the finding that there had been any fraud or misrepresentation by the Appellant.

38. Insofar as the second question is concerned, I find as follows :

- G. The Club's Bye-Laws do not contain any express provision that distinguishes between biological children and adopted children, nor do the Bye-Laws specifically exclude wards from being considered 'dependent children'. Crucially in this regard, the Club's own witness, Mr. Shekhar Gupta, has admitted in cross-examination that "*It is true that the word 'child' is not defined*

in the memorandum, articles of association. No distinguish is made between biological child and ward." Thus, the Club has admitted that there is no difference between a ward and a biological child.

H. In the aforesaid context, i.e., the interpretation of 'child' and 'dependent' becomes crucial. As rightly argued by Mr. Cama, the context in which the word 'child' is used in the Club's Bye-Laws appears to relate to age rather than parentage since male children continue as dependent members until they attain the age of 21 and females continue as dependent members until their marriage. Hence, the purpose of dependent membership is typically to extend privileges to those who are seemingly financially reliant on the primary member. Thus it would make no difference if such dependent children are natural-born descendants, or are adopted, or step-children, or wards, and the Appellant's reliance on ***Nanak Chand (supra)*** is apposite.

I. Also, it is essential to note that Section 4(2) of the Guardians and Wards Act, 1890, specifically defines a 'guardian' as a person "*having the care of the person of a minor or his*

property, or both." This inherently implies a relationship of dependency. A legal guardian, appointed by a Court, therefore assumes the responsibility for the ward's well-being and upbringing in the very same manner as that of a parent.

J. The Appellant's reliance upon various legislations like the RTE Act and Article 51A(k) of the Constitution are instructive and serve to illustrate the broader legislative trend of equating 'parents' and 'guardians' in the context of a child's rights and welfare. From the RTE Act it can be seen that the Act, while defining the term 'guardian'¹³ uses the term 'child' in context of both a 'natural guardian' as well as a 'Court appointed guardian', therefore, not distinguishing between a 'biological child' and a 'ward'.

K. Similarly Article 51A(k) of the Constitution, also reinforces this principle by placing the responsibility on both parents and guardians to provide educational opportunities to their children or wards, respectively by using "child" and "ward" interchangeably. The Constitution unequivocally extends the same fundamental opportunities and safeguards to both natural

¹³ Section 2(g) of the RTE Act

born children and wards, and both are intended to be treated at par, irrespective of their familial or guardianship arrangements. *Thus*, in my view and as rightly argued by Mr. Cama, even the legislature does not contemplate any qualitative difference between a 'ward' and a 'child'.

- L. The term 'dependent' in common parlance simply means relying upon another for sustenance and survival. In the context of the Club, it signifies a relationship where the member is responsible for the dependant's access to the Club and its facilities. Thus, a ward would also, by virtue of a guardianship order, be dependent upon the guardian for their care and upbringing, in the same manner in which a biological child and/or an adopted child would be. The position would be no different and would therefore also extend to all aspects of the child/ward's life, including recreational and social activities, facilities, and privileges.
- M. In the present case, the Club's ambivalent and self-serving interpretation of its own AOA and bye-laws has come to the fore from the following:

1) The Club has admittedly granted membership to one Edward Colaco, who was neither the adopted nor natural-born child of one Wing Commander Chris Chatterjee, upon his attaining the age of 21, as an erstwhile dependant member.

2) Similarly, one Ms. Supriya Patel, who was married to one Mr. Shailesh B. Patel (member) and was admitted as a member after the death of her husband, listed her daughter, Sameera Patel, as her dependant daughter, even though her daughter was neither adopted nor naturally born to the original member and was granted membership of the Club.

The above makes clear that the Club, when it chooses to, does recognize individuals who are neither biological nor adopted children of members and treats them as 'dependent members' and/or allows them to transition to full membership.

- N. The contention that the Appeal has become infructuous because the Wards attained the age of majority (18) is also misplaced. The Club's own rules specify that a son is eligible to continue as a dependent member until the age of 21 and a daughter until marriage. The example of Edward Colaco as noted above, whose dependent membership was converted to main

membership after he turned 21, clearly negates the Club's contention that attaining 18 years automatically terminates a dependent status under Club rules. Thus, while the Majority Act, 1875, defines the age of majority for general legal purposes, specific organizational rules can define "child" or "dependent" based on different age thresholds for their internal purposes.

- O. The Club's reliance upon Bye-Law No. 7 is also in my view wholly irrelevant to the facts of the present case. This Bye-Law plainly deals with the devolution of membership after the death of a permanent member. The issue at hand is in respect of the entitlement of the Wards' to the membership of the Club on the basis that they are her dependents. In my view, the language "*Dependent children of the member will be permitted to utilize all the facilities of the Club, as they were entitled to, during the life time of the deceased member*" in Bye-Law No. 7, if anything, supports the idea that dependent children enjoy privileges of the member during the member's lifetime, thus highlighting that the "dependent children" is what is paramount.

Conclusion.

39. Based on the foregoing reasons, I answer the aforesaid questions¹⁴ in the negative. There was no misrepresentation or false declaration by the Appellant and nor do the Club's Bye-Laws or AOA explicitly preclude a 'ward' from being considered a 'dependent child'. I thus find that the Trial Court erred in dismissing the Suit.

40. It is well settled that Courts do not normally interfere in matters concerning the internal governance/management of Members Club except in cases of manifest illegality. In the present case, for the reasons indicated above, it is clear that the Club has acted in a manifestly illegal and perverse manner which would thus warrant interference by the Court.

41. The Impugned Judgement of the Trial Court dated 5th July 2024 is hereby quashed and set aside.

42. The captioned Appeal is allowed.

43. In view of the above, interlocutory applications, if any, shall also stand disposed of.

14 1. Whether the Appellant made a misrepresentation or false declaration regarding the Wards' relationship with the Appellant; and
2. Whether the Club's Bye-Laws or AOA specifically preclude or prohibit a 'ward' from being considered a 'dependent child' for the purpose of Club membership

44. It is declared that Amoorth Dayanand Shetty and Aadhyaa Dayanand Shetty are entitled to enjoy all rights and privileges of the membership of the Appellant with the Club as her dependent children, subject to the Club's rules regarding age and marital status applicable to all dependent children.

45. It is clarified that this judgement and the interpretation of the Club's AOA and Bye-laws are only in the context of the peculiar facts and circumstances of the present case and shall therefore not apply as a precedent in all cases.

(ARIF S. DOCTOR, J.)

After Pronouncement:

46. At the request of the Learned Counsel for the Respondents, the effect of the order remains stayed for the period of four weeks from today.

(ARIF S. DOCTOR, J.)