

(2007) 03 CAL CK 0015

Calcutta High Court

Case No: C.O. No. 1339 of 2005

Royal Calcutta Golf Club

APPELLANT

Vs

Lalit Kumar Jhalaria

RESPONDENT

Date of Decision: March 22, 2007**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151, 91
- Constitution of India, 1950 - Article 227

Citation: 111 CWN 425**Hon'ble Judges:** Prabuddha Sankar Banerjee, J**Bench:** Single Bench**Advocate:** S. P. Mukherjee, Rabi Sankar Banerjee, Rabindra Nath Bhattacharya, for the Appellant; Anirban Roy, Sanjoy Jhunjhunwala, for the Respondent

Judgement

Prabuddha Sankar Banerjee, J.

This revisional application under Article 227 of the Constitution of India is directed against judgment dated 28-02-2005 passed in connection with Misc. Appeal No. 314 of 2004. The said appeal was at the instance of the defendant of T.S. No. 305 of 2003 which was pending before the Learned First Civil Judge, Junior Division at Alipore. The said suit was brought by the present Opposite Party against the present petitioner for declaration that the resolution dated 22-08-2003 as informed by club's letter dated 29-08-2003 and as detailed in paragraph 5 of the plaint is illegal, void and not binding upon the plaintiff. The defendant also prayed for declaration that the plaintiff as a permanent member of the club is entitled to use the club without hindrance. The plaintiff also prayed for permanent injunction restraining the defendant club from giving effect to the resolution dated 22-08-2003. The plaintiff also prayed for other consequential reliefs. The plaintiff also filed one application under Order 39 Rule 1 and 2 read with Section 91 and 151 of CPC with prayer for issuing temporary injunction restraining the Opposite Party/defendant club from giving effect or further effect to the resolution passed on 22-08-2003.

2. On the basis of the application for injunction, the Learned Trial Judge refused to pass any ad-interim order of injunction.
3. Against the said order, the plaintiff preferred one Misc. Appeal, where prayer for interim order was also rejected by the Learned first Appellate Court.
4. The plaintiff preferred a civil revision against the said order and the Hon"ble High Court disposed of the revisional without passing any order on interim injunction.
5. Thereafter, the Learned Trial Court heard the injunction application and allowed the same and directed the defendant club not to give effect to the resolution passed on 22-08-2003 suspending the plaintiff from using the club till disposal of the suit.
6. Against that order of the Learned Trial Judge, the defendant preferred one Misc. Appeal which was numbered as Misc. Appeal No. 314 of 2004.
7. By the order impugned, the Learned Additional District Judge, 7th First Track Court, Alipore dismissed the appeal and affirmed the order of the Learned Civil Judge, Junior Division.
8. Being aggrieved by the said order of the Learned First Appellate Court, the instant revisional application has been preferred by the defendant/petitioner.
9. Mr. S. P. Mukherjee, learned counsel for the petitioner challenged the impugned order on the following grounds:
 - i) By allowing the injunction application, the Court gave the entire relief to the plaintiff which is against law.
 - ii) That the Court wrongly entertained the application though the law clearly provides that Civil Court has no power to entertain any suit relating to domestic enquiry.
 - iii) That the Court exceeded its jurisdiction in allowing the application under Order 39 Rule 1 and 2 CPC though previously the plaintiff failed to obtain any interim order of injunction even from the Hon"ble Court.
 - iv) That the Court ought to have considered that as the plaintiff failed to make out any prima facie case, the order of injunction passed by the Trial Court was illegal.
10. The said pleas were strongly opposed by Mr. Anirban Roy, Learned Counsel for the Opposite Party. It was contended on behalf of the present Opposite Party who was the plaintiff before the Court below that the Court rightly passed the order as strong prima facie case was made out against the defendant and the balance of convenience and inconvenience was also in favour of the plaintiff.
11. At the same time, Mr. Roy contended that the whole alleged proceeding in the club house of the defendant will go to show that everything was done behind the back of the plaintiff and without giving him proper opportunity, the plaintiff was not

allowed to enter into the club house. It was the further contention of Mr. Roy that the alleged enquiry will go to show that the same was done to take revenge against the plaintiff whose article was published in the leading Golf Journal revealing corruption in the Club. Mr. Roy contended that the common members of the club did not raise any objection regarding publication of the article in the leading journal and only the persons having vested interest took part in the alleged domestic enquiry.

12. It was the contention of Mr. Roy that one Mr. A. Luthra was the person against whom some allegations were made in the article and he was present in the Committee meeting held on 18th July 2003. As there was direct allegation against Mr. Luthra, his presence in the said meeting and in the subsequent meeting and conducting the same by him is against natural justice as a person cannot be judge of his own cause.

13. Mr. Roy also challenged the procedure adopted in the said domestic enquiries on the ground that the question and answer which was relied upon by the defendant in passing the resolution by which he was debarred from entering into the club is against all kinds of legal ethics and also against the rule of natural justice.

14. In course of his strenuous argument, Mr. S. P. Mukherjee challenged the maintainability of the suit before the Court below mainly on the ground that the Civil Court has no power in entertaining the suit. It was his further contention that as the suit is not maintainable before the Court below, the impugned order passed by the Learned Trial Judge is to be treated as an order passed by the Court having no jurisdiction. At the same time, Mr. Mukherjee contended that all the provision of the rules governing the club were duly observed and the plaintiff was given enough opportunity- to place his case.

15. Mr. Mukherjee, further contended that the publication which was made in the leading golf journal is nothing but defamatory in nature and as such notice was served upon him. Subsequently, the proceeding was started against him and when he failed to satisfy the committee members who were holding the meeting/ enquiry regarding publication of Article in the leading Golf journal, the resolution was taken by the committee members by which he was debarred from entering the club house. Mr. Mukherjee contended further that the committee never took any resolution thereby suspending him from the membership of the club. As such he contended that interest of the plaintiff was not hampered by the resolution.

16. In course of his argument, Mr. Mukherjee relied upon the following cases:

i) Lennox Arthur Patrick O'Reilly (since deceased) & Anr. vs. Cyril Cothbert Gittens, reported in 1954 CWN (Privy Council) 124;

ii) [Express Newspapers \(P\) Ltd. Vs. Michael Mark and Another,](#) ;

iii) [Mahaliram Santhalia Vs. Fort Gloster Jute Manufacturing Co. Ltd. and Others,](#)

iv) [V.N. Bhajekar Vs. K.M. Shinkar](#), ;

v) Satyavani Sidhantalankar & Ors. vs. Arya Samaj, Bombay reported in AIR (33) 1946 Bombay 516;

vi) [Uttaranchal Road Transport Corpn. and Others Vs. Mansaram Nainwal](#), ; and

vii) [Rubinder Singh Vs. Rajasthan Financial Corpn. and Others](#), ;

17. On the other hand Mr. Roy relied upon the following cases:

i) Ujjal Talukdar vs. Netai Chand Koley reported in 1974 CWN 404;

ii) Lee vs. Showmen's Guild of Great Britain reported in May 15, 1952 All England Law Reports.

iii) [Institute of Chartered Accountants of India Vs. L.K. Ratna and Others](#), .

18. On the basis of those judgments, Mr. Roy, learned counsel for the Opposite Party contended that the Civil Court has enough power to entertain the suit as rule of natural justice was violated. In other words, it was the contention of Mr. Roy that as the plaintiff failed to get natural justice from the committee members who were present in the meeting in which the impugned resolution was taken, he had no other alternative but to approach the Civil Court. This plea was taken by Mr. Roy when it was argued on behalf of the present petitioner by Mr. Mukherjee that alternative remedy was with the plaintiff and without availing the same, he opted for filing the suit before the Court which had no jurisdiction to entertain the same.

19. I have already stated that instant revisional application has been challenged by Mr. Roy, Learned counsel for the Opposite Party mainly on the ground that the present Opposite Party had to file suit because the alleged domestic enquiry was conducted by Mr. Luthra, against whom the present Opposite Party wrote something which was duly published in the leading Golf journal.

20. Mr. Roy also took the specific plea that as the present Opposite Party was not informed about the nature of the enquiry, he was not given any opportunity to place his case before the enquiring committee and the resolution taken by the said committee is to be treated as one which is against rule of natural justice.

21. For this Mr. Roy drew the attention of the Court to the pleas taken on behalf of the present petitioner that enough opportunity was given to the present Opposite Party to place his case before the enquiring committee and in fact in spite of getting the said opportunities he did not answer to the charges.

22. At the same time, Mr. Roy drew the attention of the Court to the questionnaire which goes to show that the same was without any signature of the present Opposite Party and the same was not disclosed at the earliest opportunity. Accordingly, it was the contention of Mr. Roy that the said alleged questionnaire with purported answer thereto by the present Opposite Party has been

manufactured only for this revisional application. Accordingly, the said questionnaire is to be disbelieved by the Court.

23. I have already stated that Learned counsel for the petitioner Mr. Mukherjee contended that the rules of the Club i.e. Royal Calcutta Golf Club clearly provides that if any person is aggrieved by order of the committee, remedy lies before the proper forum and Civil Court has no jurisdiction to entertain any suit regarding the outcome of the resolution of the committee.

24. Mr. Mukherjee explained the distinction between the words "expulsion" and "suspension".

25. It was the contention of Mr. Mukherjee that in the instant case, the Opposite Party was never expelled but he was suspended from entering into the club house and as such, it cannot be said that the interest of the present Opposite Party has been seriously affected. At the same time, it was the contention of Mr. Mukherjee that Rule does not provide that Mr. Luthra, against whom the article was published in the journal, was debarred from presenting the case against the Opposite Party in the meeting. It was the further contention of Mr. Mukherjee that the rule of natural justice was not violated as everything was done as per provision of law and rules of the Club. As such, Mr. Mukherjee contended that the said plea of violation of rule of natural justice as taken by Mr. Roy, Learned counsel for the Opposite Party cannot be accepted.

26. I have already stated that Mr. Mukherjee took the specific plea that by allowing temporary injunction, the trial Court has given the entire relief of the plaint to the present Opposite Party. As such, the order impugned cannot be supported as the appellate Court also confirmed the order passed by the Learned Trial Judge by which the present petitioner was restrained from implementing or giving into effect the resolution in question.

27. I will now discuss the case laws referred by Learned Counsel for the parties.

28. In the case reported in 1995 Supp (2) SCC 93 Rabinder Singh vs. Rajasthan Financial Corpn. & Ors., the head note runs as follows :

"Held, High Court was not justified in doing so as it would practically amount to decreeing the suit which was beyond the purview of granting interlocutory orders. In the circumstances, directions issued by Supreme Court to the purchaser of the machinery to maintain the machinery in the same condition without alienating or encumbering any part of it and to apply for being impleaded in the suit if not so desires and also to the Trial Court to dispose of the suit expeditiously."

29. In that case Order 39 Rule 1 was filed before the appellate Court and the fact was quite otherwise.

30. In the instant case the application was filed before the Court below and the Court after due consideration of materials on record allowed the application.

31. As such, the said reported case will not help Mr. Mukherjee's client.

32. In the case reported in 1954 CWN (Privy Council) 124 Lennox Arthur Patrick O'Reilly (since deceased) & Anr. vs. Cyril Cothbert Gittens, the Privy Council held "that the order was within the power of the tribunal of enquiry and the plaintiff was not entitled to the declaration asked for,"

33. Neither the Supreme Court of the colony nor the Privy Council was entitled to sit as a Court of appeal from the decision of a domestic tribunal, such as the Steward Trinidad Turf Club.

34. Consequently, even where there was evidence to establish the blame or responsibility of the plaintiff in respect of offence charged and the punishment that was severe, these were held to be essentially matters for the domestic tribunal to decide as it thought right, specially because they did not affect the jurisdiction of the tribunal and because no attack was made upon the honesty or good faith of its members".

35. In the instant case, the sincerity and honesty of the member who presented the case has been challenged including violation of the rule of natural justice.

36. As such the said case law will also not help Mr. Mukherjee's client.

37. The case reported in AIR 1963 SC 1141, T. P. Daver vs. Lodge Victoria No. 363, S. C. Belgaum & Ors., will not help Mr. Mukherjee's client as it has been held that the said principle is not applicable, where, the question of good faith or acts or violation of principle of natural justice is in question.

38. In the case reported in AIR 1955 Calcutta 132, Mahaliram Santhalia vs. Fort Gloster Jute Manufacturing Co. Ltd. & Ors., the Hon'ble Court held that "prima facie unless a case was made in bad faith it would be normal course of the Court to allow the decision of the Chairman to stand as prima facie final until it can be found to be wrong at the trial and decision in the suit. If that principle is acceded then there is no scope here in this case for grant of an interlocutory injunction on the ground that the Chairman has wrongly rejected certain votes given by proxy or wrongly accepted such votes".

39. The said principle is also not applicable in the instant case as the sincerity and honesty of Mr. Luthra, the person who presented the case in the alleged enquiry has been challenged.

40. The case reported in AIR 1934 Bombay 243, V. N. Bhajekar vs. K. M. Shinkar & Ors., in my humble opinion will also not help Mr. Mukherjee's client.

41. The case reported in AIR (33) 1946 Bombay 516. Satyavari Sidhantalankar & Ors. vs. Arya Samaj, Bombay, relates to a different fact and the principle as laid down in that case is also not applicable in the instant case.
42. The case reported in (2006)6 SCC 366, Uttaranchal Road Transport Corpn. & Ors. vs. Mansaram Nainwal, relates to a case regarding acquittal of a person in a criminal case and subsequent effect on departmental proceeding. The said case in my opinion also will not help Mr. Mukherjee's client
43. Mr. Mukherjee referred to "natural justice" on the basis of definition of the same as per law of Lexicon. Let me quote the same.
- "The rules and procedure to be followed by any person or body charged with duty of adjudicating upon disputes between, or rights of others, e.g. a Government department. The chief rules are to act fairly in good faith without bias and in a judicial temper; to give each party the opportunity of adequately stating his case and collecting or contradicting any relevant statement prejudicial to his case and not to hear one side behind the back of the other. A man must not be judge in his own cause, so that a judge must declare any interest. He has in the subject matter of the dispute before him. A man must have notice of what he is accused. Relevant document which are looked at by the Tribunal should be disclosed to the parties interested."
44. Mr. Roy, Learned counsel for the Opposite Party also relied upon the interpretation of natural justice. Mr. Roy contended that his client was not told why he was called in the meeting which was held in the month of July 2003. It was his further contention that as he was not told about the nature of enquiry, he did not get any proper opportunity to place his case. It was the further plea of Mr. Roy that the whole episode including the second meeting which was held in the month of August 2003 will go to show that the previous meeting which was held in the month of July 2003 where resolution was already taken that he would be suspended is nothing but act of revenge taken by the committee headed by Mr. Luthra.
45. Mr. Roy asked the question why the Opposite Party has been suspended twice as he was suspended again in the month of August 2003 through he was suspended earlier in the month of July, 2003.
46. I have already stated that Mr. Roy relied upon the cases which were mentioned earlier.
47. Let me discuss the said case laws.
48. The case reported in (1986)4 SCC 537, Institute of Chartered Accountants of India vs. L.K. Ratna & Ors., the Hon"ble Supreme Court held that civil Court has power, if it is found that in the departmental enquiry proper opportunity was not given to the person concerned.

49. In the case reported in 1974 CWN 404, Ujjal Talukdar vs. Netai Chand Koley, the Court held that a Court can set aside the decision of a domestic Tribunal only when tribunal over stepped the limits of its jurisdiction, where, it violates the principle of natural justice, when it acts dishonestly or its decision is passed on a legal misconstruction.

50. In the case reported in All England Law Reports, Vol. I, 175, Lee vs. Showmen's Guild of Great Britain, the court held that the Court had jurisdiction to examine any decision of the committee which involved a question of law including one of the interpretation of rules, on the facts of the committee, had mis-construed Rule 15(C) in findings that the plaintiff had been guilty of "unfair competition" within the meaning of that rule; and. therefore, the committee had acted ultra vires and their decision to expel the plaintiff was void.

51. In the instant case, it is not disputed that the article written was mainly against Mr. Luthra who was the captain of the meeting on both the occasions and he presented the case against the present Opposite Party/ plaintiff. It is also clear from the materials on record that the plaintiff/Opposite Party was not given any opportunity to place his case as in the notice, nothing was mentioned why he was called to attend the meeting. It is also not disputed that the questionnaire was placed before the Court at a belated stage though the defendant/petitioner took the specific plea that the present Opposite Party/plaintiff did not give any answer to the queries made by the members in the meeting. It is also not disputed that in the questionnaire the signature of the present Opposite Party was not taken. In view of the said position, I am of clear opinion that the Learned Trial Judge found strong prima facie case in favour of the plaintiff/Opposite Party and was also of opinion that balance of convenience and inconvenience was in his favour.

52. Accordingly, I am also of clear opinion that there is no need to interfere with the findings of the Learned Trial Judge which was subsequently affirmed by the appellate Court. As such, the instant revisional application is dismissed but without any cost being devoid of any merit.

53. Interim order of stay granted earlier be vacated.

54. It is needless to mention that I have not gone through the merit of the case and findings in the body of this order is only tentative and not final and the Learned Trial Judge will not be influenced by the said findings in disposing of the suit. Urgent Xerox certified copy of this order be given to the parties within 10 days from the date of this order on proper application

CO. 1339 of 2005.

Later on:

After passing of the order, it is prayed on behalf of the present petitioner that operation of the order be staved.

In view of the discussion made in the body of the said judgment, I do not find any reason to pass such order and accordingly, the same is rejected.

Urgent xerox certified copy of this order be given to the parties within seven days from the date of application.