

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4016/2007

(From the judgement and order dated 14/02/2007 in IA No. 2/2007 & RFA No. 153/2007 of The HIGH COURT OF KARNATAKA AT BANGALORE)

S.PHILIP LEWIS

Petitioner(s)

VERSUS

BOWRING INSTITUTE

Respondent(s)

(With prayer for interim relief)

(For final disposal)

Date: 11/05/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr.Dhruv Mehta, Adv.

Mr. Vipin Nair, Adv.

Mr. P.B. Suresh,Adv. for

M/S. Temple Law Firm,

For Respondent(s) Mr.Soli J.Sorabjee, Sr. Adv.

Mr.Dayan Krishnan, Adv.

Mr.Gautam Narayan, Adv.

Mr. Nikhil Nayyar,Adv.

Mr.Ankit Singal, Adv.

Mr. K.B.S.Marium, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed to the extent mentioned in the signed order.

(Meenu Sethi)
Court Master

(Pushap Lata Bhardwaj)
Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No 2486.OF 2007

(Arising out of SLP (C) No. 4016/2007)

Dr. S. Philip Lewis

...Appellant

Versus

Bowring Institute

...Respondent

O R D E R

Leave granted.

Respondent was a member and former President of the respondent -
Bowring

Institute. He was removed from the membership by the Managing Committee of the

respondent Institute on 2.6.2006. Respondent is a Society registered under the Mysore

Societies Registration Act being Act No. XXI, 1860 and now under The K
arnataka

Societies Registration Act, 1960 and the Rules framed thereunder.

Appellant filed a criminal complaint against the Managing Committee
of the

respondent before the Metropolitan Magistrate, Bangalore in terms of Section 200

Cr.P.C. We are, herein, not concerned therewith. He was removed from the membership

of the Institute under Rule 44(K) (i) of the Rules. His membership was, however,

restored. He was, however, again issued a notice asking him to show-cause as to why

he should not be removed from the membership of the respondent-Institute on the

allegations specified therein. Appellant, thereafter, filed a suit for declaration that the

resolution passed by the Managing committee of respondent dated 14.10.2006 and

the show cause notice dated 21.10.2006 were illegal and

void. In the said suit the following prayers were made :

(a) To declare the Managing Committee resolution dated 14.10.2006 and in pursuance in issuing the show cause notice dated 21.10.2006 of the Defendant club to the Plaintiff is illegal and void in so far as its relates to the Plaintiff.

(b) Consequently to grant a perpetual injunction restraining the Defendant club or whoever acting on their behalf from taking any action on illegal recommendation of their resolution dated 14.10.2006 of the Managing Committee and thereby issue of who cause notice dated 21.10.2006 by the defendant against the Plaintiff in any manner.

(c) To grant such other decree, order or relief to which the Plaintiff may be found entitled to under the circumstances of the case including award of costs in the interest of justice.

An application for interim injunction was also filed therein. The trial

Court vide

its order dated 6.11.2006 directed the respondent to maintain Status-quo in

regard to the membership of the appellant.

Respondent thereafter filed an application under Order 7 Rule 11 of the Code of Civil Procedure before the Civil Court seeking rejection of the plaint, inter alia, on the premise that the appellant was required to avail the remedy of an appeal to the General Body of the Institute before filing the suit in terms of Rule 56 of the Institute Rules. The said application was allowed and the suit was dismissed as premature, inter-alia, on the premise that the appellant was required to first avail the remedy of an appeal as provided for under Rule 56 of the Institute Rules.

Appellant, however, in the meantime filed his show-cause pursuant to the notice served on him. Respondent Managing Committee held an emergency meeting on 17.1.2007 and by a resolution adopted therein expelled the appellant from the membership of the Institute. Appellant thereafter preferred an appeal before the High Court at Bangalore being R.F.A. No. 153 of 2007 questioning the order of the City Civil Court rejecting the plaint filed by the appellant. An interim application seeking stay of the operation of the said order was also filed. By reason of the impugned order dated 14.2.2007, a learned Judge passed the following order:

".....Having regard to the facts of the case, I feel it appropriate to permit the appellant to avail of the appellate remedy as against the order dated 17.1.2007 expelling the appellant from the membership of the Institute. If the appellant avails of the appellate remedy within two weeks from today by filing an appeal., the Appellate Authority i.e. the Special General Body shall consider

the appeal expeditiously. Till such consideration, the expulsion of the appellant from the membership of the respondent-Institute shall stand stayed....."

Mr. Dhruv Mehta, learned counsel appearing on behalf of the appellant

would submit that having regard to the fact that the jurisdiction of Civil Court

cannot be held to be ousted only because there exists a provision for filing an

appeal in terms of Rule 56 of the Institute Rules, and thus the Division Bench of

the High Court had committed a manifest error of law in passing the impugned

order in so far as it failed to take into consideration that a Civil suit was

maintainable.

Mr. Soli J. Sorabjee, learned senior counsel appearing on behalf of the

respondent on the other hand would contend that the impugned order need not

be interfered with inasmuch as the appellant herein, after the decision of the High

Court, has in fact preferred an appeal before the General Body on or about

27.2.2007. It was pointed out that the appellant has not disclosed the said fact in

the special leave petition.

It is not in dispute that the appeal preferred by the appellant herein before

the High Court is still pending. The High Court although in its impugned order

stated that the R.F.A. itself had come up for orders on that day, it appears, the

impugned order has been passed only on the interlocutory application filed by

the appellant thereto before.

The question, therefore, as to whether a suit was maintainable and/or

whether the plaint of the appellant was liable to be rejected is require

d to be

determined by the Division Bench of the High Court..

In regard to the question as to whether the appellant could be directed to prefer an appeal, we are of the opinion that such direction should not have been given.

The fact, however, remains that the appellant has preferred an appeal to the General Body.

Mr. Mehta, learned counsel, however, is correct in his submission that whereas the special leave petition was filed on 26.2.2007, the appeal having been preferred on 27.2.2007, the question of referring to the pendency of the appeal did not arise.

However, in view of the fact that now appeal has in fact been preferred by the appellant before the General Body, we do not intend to make any observations on the merit of the matter. We have no doubt in our mind that the appellate body shall consider the questions raised by the appellant in a just and fair manner without in any way being influenced by the proceedings of the Court.

We may place on record that Mr. Soli J. Sorabjee, learned senior counsel appearing on behalf of the respondent very fairly stated that the order dated 17.1.2007 expelling the appellant from the membership of the Institute shall not be implemented during the pendency of the appeal.

We may, however, clarify that if the appeal of the appellant is dismissed

by the General Body of the respondent-Institute, it would be open to him to file an appropriate application for restoration of the suit and amendment of the plaint as also an application for an interim order before the High Court and an appropriate order thereupon may be passed by it in accordance with law.

Keeping in view the facts and circumstances of this case, we would request the High Court to consider the desirability of disposing of the matter as expeditiously as possible. We would like to place on record that we have not applied our mind to the merit of the matter and, thus, all contentions of parties shall remain open.

The appeal is allowed to the aforementioned extent.

.....J
(S.B. SINHA)

.....J

.....
(MARKANDEY KATJU)

New Delhi,
May 11, 2007.