

IN THE HIGH COURT OF SINDH, KARACHI
(Appellate Jurisdiction)

Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Aziz-ur-Rehman

High Court Appeal No. 310 of 2016

Karachi Gymkhana and others..... Appellants

Versus

Usman Ahmed Ansari & others..... Respondents

High Court Appeal No. 311 of 2016

Karachi Gymkhana and others..... Appellants

Versus

Iqbal Umer and others..... Respondents

High Court Appeal No. 312 of 2016

Karachi Gymkhana and others..... Appellants

Versus

Ali A. Rahim & others..... Respondents

High Court Appeal No. 313 of 2016

Karachi Gymkhana and others..... Appellants

Versus

Abid Hussain Africawala & others..... Respondents

High Court Appeal No. 314 of 2016

Karachi Gymkhana and others..... Appellants

Versus

Homi B. Khambata & others..... Respondents

High Court Appeal No. 315 of 2016

Karachi Gymkhana and others..... Appellants

Versus

Syed Ghazanfar Ali & others..... Respondents

For the appellants in all HCAs: *Khawaja Shamul Islam, advocate.*

For respondent No.1: *Dr. Farogh Naseem, advocate*
(in HCA No.312/16). *a/w. M/s. Munawar Hussain, Ms. Pooja Kalapna & Ahmed Hussain, advocates.*

For respondent No.1: *Raja Safeer Anjum, advocate.*
(in HCA No.310/16).

For respondent No.1: *Syed Khurram Nizam, Advocate*
(in HCA No. 313/16). *a/w. M/s. Hasan K. Hashmi & Mobeen Lakho, advocates*

For respondent No.1: *Mr. Asim Mansoor Khan, advocate.*
(in HCA No. 314/16).

For respondent No.1: *Mr. Azhar Ahmed Shah, advocate.*
(in HCA No. 311/16).

For respondent No.1: *Mr. Suhail Muzaffar, advocate.*
(in HCA No. 315/16).

Date of hearing: **26.02.2018.**

J U D G E M E N T

AQEEL AHMED ABBASI, J:- Above six High Court Appeals arise from a combined order dated 21.09.2016 (“**the impugned Order**”) passed by a learned Single Judge of this Court in Civil Suits No.1353, 1349, 1355, 1358, 1374 and 15214, all of 2016, whereby, the injunction applications filed by the respondents No.1 herein (plaintiff in the suits) under Order XXXIX Rules 1 and 2 CPC in their respective suits and the applications filed by the appellants under Order XXXIX Rule 4 CPC, were decided against the appellant and ad interim orders granted in favour of the respondents (plaintiffs) in different suits has been confirmed. Since identical facts are involved in the said suits and the relief claimed by the respondents (plaintiffs) through injunction applications is also common, except allegations against the respondents with regard to their conduct as members of Karachi Gymkhana (“**the Gymkhana**”), therefore, by consent of the

learned counsel for the parties, the above high court appeals have been heard and being decided by this common order.

2. Briefly, the relevant facts, as stated in the instant High Court Appeals, are that the respondents filed their respective suits before a learned Single Judge of this Court against termination of their membership of the Gymkhana by the appellants on the charges of corruption and corrupt practices in terms of section 42 of the Specific Relief Act 1877, seeking following reliefs:

- (a) *Declare the so-called forensic and financial report of the Defendant No.14 dated 16.12.2015 (Annex-C to the plaint), the appointment / co-option of the Defendants No. 7 to 13 in the Defendant No.7, the report of the Defendant No.7 of May, 2016 (Annex-E to the plaint), all decisions / resolutions of the General Body of the Defendant No.1 dated 26.5.2016, including the Plaintiff's letter of termination of membership from the Defendant No.1 dated 26.5.2016 (Annex-F to the plaint) to be completely unlawful, ultra vires the law, Rules and bye-laws of the Defendant No.1, mala fide, in breach of the principles of natural justice, without jurisdiction, void ab-initio, and of no legal effect or consequence;*
- (b) *Permanently and pending disposal of the main suit suspend the operation of the so-called forensic and financial report of the Defendant No.14 dated 16.12.2015 (Annex-C to the plaint, the report of the Defendant No.7 of May, 2016 (Annex-E to the plaint) all decisions / resolutions of the General Body of the Defendant No.1 dated 26.5.2016, including the Plaintiff's letter of termination of membership from the Defendant No.1 dated 26.5.2016 (Annex-F to the plaint), while restraining the Defendants, their officers, cronies, agents or any person acting for or on behalf of the Defendants from taking any adverse action against the plaintiff in any manner whatsoever.*
- (c) *Declare that the actions of the said investigation Committee after 18.01.2016 are unlawful, illegal, unauthorized, unofficial, void ab-initio and of no legal value or effect whatsoever.*
- (d) *Declare that the said Investigation Report of May, 2016 is false incorrect fallacious, distorted, untrue, wrong, fictitious, concocted, invented, untruthful and perfidious and is based on mala fide intentions and ulterior motives.*
- (e) *Award costs and special costs.*
- (f) *Award / grant any other relief deemed fit and appropriate in the circumstances."*

3. In the above suits, injunction applications were also filed by the plaintiffs under Order XXXIX, rules 1 and 2, CPC, whereby interim

relief was granted to the respondents vide order dated 31.05.2016, in the following terms:

“Through this Suit, the plaintiff has challenged termination of his membership in defendant No.1 (“Karachi Gymkhana”) communicated to him vide Letter dated 26.05.2016. Learned Counsel for the plaintiff submits that membership has been terminated by the General Body of defendant No.1 without following the rules of defendant No.1 in this regard, specially Rule 30 of the Bye-laws of defendant No.1. He further submits that even the Investigation Committee constituted by the General Body had recommended that the membership of Project Committee’s members be suspended and they may be proceeded against as per Karachi Gymkhana Rules, whereas, the impugned termination has been done without even following recommendation of the Investigation Committee as well as rules of defendant No.1. He further submits that neither any Show Cause Notice was issued to the plaintiff nor the plaintiff has been confronted or given a chance to controvert the Investigation Committee’s Report, wherein, it has been stated that allegedly plaintiff had accepted the allegations leveled against him. He submits that though the plaintiff had earlier approached this Court by filing Suit No.1304 of 2016, however, the same has become infructuous in view of the impugned termination of the plaintiff’s membership. He has also referred to orders passed by this Court on 30.5.2016 in Suit No. 1349 of 2016 and others, wherein the impugned termination letters have been suspended.

Let notice be issued to the defendants No. 1 & 8 only for 03.06.2016. Till next date, the operation of impugned Letter of termination dated 26.5.2016, available at page 545 of instant file, shall remain suspended.”

4. The appellant filed an application under Order XXXIX rule 4 CPC, for setting aside the interim order passed in favour of the plaintiffs, whereafter, the applications filed by the respondents under Order XXXIX rules 1 and 2 CPC and the applications filed by the appellant under Order XXXIX rule 4 CPC, had been disposed of by the learned Single Judge vide the combined Order 21.09.2016, which has been impugned in the above high court appeals with the request to set aside the same and dismiss the injunction applications filed by the plaintiff / respondents in the suits.

5. Learned counsel for the appellants has vehemently argued that the learned Single Judge has erred in law and fact while confirming injunction in favour of the respondents, without realizing that the respondents had no locus standi to file subject suits under section 42 of the Specific Relief Act, 1877 or to seek an injunction under section 56 thereof as, according to the learned counsel, the appellant No.1 is a private club having its own bye-laws according to which the right of admission or expulsion of a member is reserved with the management of the club. It has been further contended by the learned counsel for the appellants that the membership of the respondents has been terminated pursuant to decision by the General Body of the Gymkhana in terms of bye-laws of the Gymkhana, after providing opportunity to the respondents whereas, according to the learned counsel, Investigation Committee was also constituted to look into the allegations against the respondents, who were found to be involved in massive corruption and corruption practices in respect of construction of Ground + Four Lodges for Members and Driveway (“**the Project**”) during the last several years. It has been contended by learned counsel for the appellant that there has been no mala fide on the part of the appellants whatsoever which could otherwise justify filing of a suit under section 42 of the Specific Relief Act 1877, requiring interference into a decision of a private Gymkhana on disciplinary matters relating to its members. Learned counsel further argued that without examining the nature of the suits and the relief claimed therein by the respondents, no injunctive relief could have been extended in favour of the respondents in the first instance, particularly, when appellants have filed an application under Order

XXXIX, rule 4, CPC with a request to vacate such injunction which was obtained by mis-representation of facts by the respondents. Learned counsel has also referred to various provisions of Karachi Gymkhana Rules and Bye-laws as well as the Notices issued by the appellants to the respondents and the proceedings before the Investigation Committee, and has argued that the respondents have been provided ample opportunity to explain their position with regard to the allegations of massive corruption and corrupt practices in respect of the Project and the contract awarded in violation of law, rules and regulations which, according to the learned counsel, has caused huge financial losses to the Gymkhana and its members. Learned counsel for the appellants has referred to rules 11, 13, 17 and 30 of the Karachi Gymkhana's Rules / Bye-laws which, according to the learned counsel, cast a stringent responsibility upon the office bearers of the Gymkhana towards its overall management, particularly the financial matters / transactions, however, per learned counsel, instead of safeguarding the interest of the Gymkhana and its members, the respondents indulged in massive corruption and corrupt practices and caused huge financial losses to the Gymkhana as there was delay in the construction of the Project, which was to be completed within a specified period at a specified cost and, resultantly, such delay has caused massive increase in the cost of the Project. Learned counsel for the appellants has further argued that before termination of the membership of the respondents, a detailed exercise has been undertaken which included forensic audit by independent chartered accountants firm as well as scrutiny by the Investigation Committee which comprised of highly reputed persons who have been pleased to

declare that the respondents are found guilty of the charges of corruption and corrupt practices. According to the learned counsel, the matter was ultimately placed before the Special General Body meeting of the Gymkhana held on 26.5.2016, and the General Body was pleased to approve the termination of the membership of the respondents by majority, therefore, such decision of termination of the membership of the respondents cannot be subject matter of a suit before this Court nor the respondents are entitled to seek any discretionary relief or injunction in their favour against such unanimous decision of the General Body of the Gymkhana. While making his further submissions, learned counsel for the appellants has referred to various portions of the final report of the Investigation Committee relating to the Project which, according to the learned counsel, was formed in terms of the Resolution No.1 passed by the General Body of the Gymkhana in its meeting held on 4.12.2014 for such purpose and has argued that as per the Report of the Investigation Committee the individual charges against the respondents as well as their collective misconduct has been established, therefore, as per recommendations made therein, memberships of the respondents were terminated after approval by the Special General Body Meeting of the Gymkhana held on 26.5.2016.

6. While concluding his arguments, learned counsel for the appellants submitted that learned Single Judge has also erred in law and facts, while mis-interpreting Rule 30 of the Rules and Bye-laws of the Gymkhana, whereas, according to learned counsel, reliance on Rule 30 of the Rules and Bye-laws of the Gymkhana is otherwise misconceived, as according to the learned counsel, the said rule relates

to misconduct of a member only, and does not apply to the office bearers of the Karachi Gymkhana as responsibilities of the office bearers of the Gymkhana are more stringent as compared to ordinary members of the Gymkhana. According to learned counsel, charges against the respondents are more serious and criminal in nature, therefore, extra care and a detailed procedure has been adopted, whereby, opportunity was provided to the respondents to disprove the charges of corruption and corrupt practice before Investigation Committee and before the Special General Body Meeting as well. It has been alternatively argued by learned counsel for the appellant that the term 'misconduct' used in Rule 30, includes corruption and corrupt practices, therefore, the termination of membership of the respondents under the aforesaid rule does not suffer from any error or illegality.

7. In support of his contentions, learned counsel for the appellants has placed reliance on the following cases:

- i) *The Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan* {PLD 1985 SC 134};
- ii) *Abdul Hanan v. Safdar Ali and others* {2011 SCMR 203};
- iii) *United Bank Limited and others v. Ahsan Akhtar and others* {1998 SCMR 68};
- iv) *Muhammad Mustafa Kamal v. Federation of Pakistan and others* {2011 PLC (CS) 162}: &
- v) *Muhammad Saad and another v. Amna and 27 others* {2015 YLR 1}.

8. Conversely, while leading arguments on behalf of the respondents, Mr. Farogh Nasim, Advocate, has vehemently controverted the submissions made by learned counsel for the appellants and has supported the impugned Order passed by a learned

Single Judge in the instant case which, according to the learned counsel, does not suffer from any factual error or legal infirmity. It has been argued by learned counsel for the respondents that the entire proceedings initiated by the appellants against the respondents are tainted with malice, and based on political considerations with an aim to prevent the respondents, who are very old and respectable members of Karachi Gymkhana, however, belonging to their rival group, from the yearly elections of the Karachi Gymkhana. Per learned counsel, in order to achieve the above target, the appellants have managed to illegally constitute an Investigation Committee, which was comprising of the Members of rival group whereas, no fair opportunity whatsoever has been provided to the respondents to explain their position with regard to baseless allegations of corruption and corrupt practices against them. It has been argued by learned counsel for the respondents that no proceedings of “**misconduct**” were initiated against the respondents in terms of Rule 30 of the Rules and Bye-Laws of the Karachi Gymkhana by a competent authority. On the contrary, in order to humiliate the respondents, an Investigation Committee was constituted to carry out a fishing and roving inquiry against the respondents in violation of Rules and Bye-Laws of Karachi Gymkhana, whereas, the entire investigation was based on mere surmises and conjectures, whereas, respondents were never confronted with any material or document, which would connect the respondents with the allegations of corruption in respect of two projects as referred to hereinabove. According to the learned counsel, mala fide on the part of the appellants is manifest from the record itself for the reason that similar allegations were made against some of

the other Members of the Gymkhana as well, who remained in the Management of the Gymkhana and members of the Project Committee during the period when construction of the Lodges and the Driveway Projects was being carried out, however, they have been absolved from all charges of corruption and corrupt practices, whereas, the respondents have been discriminated and charged on the same set of allegations, however, without explaining as to how the role of such members of the Committee was distinguishable from the role of present respondents in the execution or implementation of above two construction projects. Per learned counsel, the respondents are all responsible citizens of Pakistan, who enjoy excellent reputation in their respective fields as well as amongst members of Karachi Gymkhana, and have never been charged with any kind of misconduct during all these years. However, because of political enmity shown by their rival group in the Karachi Gymkhana, an extreme action of termination of their membership has been taken against them in violation of Article 10-A of the Constitution, and also contrary to the Rules and Bye-laws of the Karachi Gymkhana, therefore, the respondents had no other remedy to seek redressal of their grievance, except to file subject suits, which are pending before the learned Single Judge of this Court, to be decided on merits after recording of evidence. It has been further contended by learned counsel for the respondents that the injunctive relief sought by the respondents under the circumstances was necessary as such arbitrary and illegal act of termination of Membership of the respondents, has not only caused serious injury and humiliation to the reputation of respondents and their family members but also deprived the respondents from

exercising their fundamental rights to vote and participate in the elections of Karachi Gymkhana. Per learned counsel, all the ingredients relating to grant of injunction i.e. prima facie case, irreparable loss and injury and balance of inconvenience, are in favour for grant of injunctive relief to the respondents, whose reputation in the eyes of public at large as well as amongst the Members of the Karachi Gymkhana has been ruined by the illegal act of the appellants. Learned counsel for the respondents also referred to the Notices issued by the appellants to the respondents, the findings of the Investigation Committee, as well as the relevant Rules and Bye-Laws of the Gymkhana, and has argued that there is no nexus between the allegations leveled by the appellants in the Notices and the purported inquiry conducted by the Investigation Committee. It has been further contended by learned counsel for the respondents that action of the termination of Membership by the appellants is otherwise contrary to the recommendations made by the Investigation Committee against the respondents, as in none of the recommendations of the Investigation Committee, it has been held that the allegation of corruption and corrupt practices against the respondents stand established. On the contrary, as per recommendations of the Investigation Committee, either the respondents have been recommended to be reprimanded or it has been recommended that the matter may be further probed as Rules/Bye-laws of Karachi Gymkhana or through appropriate judicial forum. Per learned counsel, the appellants, with mala fide intention, placed the matter before the Special General Body meeting of the Gymkhana, whereas, it was not part of the agenda to consider the termination of the membership of

the respondents, on the contrary, it was for the purpose to approve and implement the recommendation of Investigation Committee, which did not include Termination of Membership, therefore, such decision by the General Body Meeting of the Gymkhana is otherwise illegal and contrary to Rules and Bye-laws of the Gymkhana. While concluding his arguments, the learned counsel for the respondents has argued that the learned Single Judge, after having taken into consideration the entire stock of the relevant facts, examination of the Report by Investigation Committee, Rules and Bye-laws of the Gymkhana, has passed a well-reasoned order, which does not suffer from any factual error or legal infirmity, nor it violates the settled legal position regarding grant of injunction in terms of Order XXXIX, Rules 1 and 2 CPC, as according to learned counsel, all the ingredients i.e. prima-facie case, irreparable loss and injury and balance of inconvenience, are in favour of respondents in the instant case, whereas, no prejudice whatsoever has been caused to appellants pursuant to impugned order. It has been prayed that instant High Court Appeals being devoid of any merits, may be dismissed.

9. Mr. Asim Mansoor, learned counsel appearing on behalf of respondent No.1 in HCA No. 314 of 2016, while adopting the arguments advanced by Mr. Farogh Nasim, advocate has further argued that once Membership of the Karachi Gymkhana is granted to a person in terms of the relevant Rules and Bye-laws, certain rights accrue to such person, who is required to be dealt with strictly in accordance with law; Rules And Bye-Laws of the Gymkhana. It has been further contended by learned counsel that there has been no specific allegation with regard to corruption and corrupt practices

against any of the respondents in terms of money nor any material whatsoever has been placed before the Investigation Committee which may suggest that the respondents have committed any financial corruption, misconduct, or violated the Rules And Bye-Laws of the Gymkhana. Per learned counsel, vague allegations have been leveled against respondents, who either remained Members of the Managing Committee in their capacity as President/Members of the Managing Committee, or as Members of the Project Committee during last several years, while the Lodges and Driveway Projects were under construction. Per learned counsel, Members of Project Committee also kept changing from time to time, particularly, after early Elections of the Gymkhana, whereas, the allegations of corruption are spread over to number of years, when large number of members of Karachi Gymkhana remained as Members of Managing Committee or Members of Project Committee, however, only respondents have been charged and held responsible for the allegation of corruption. It was further contended by learned counsel that neither the Auditors appointed for the purpose of scrutiny of financial matters relating to the subject Project nor the Investigation Committee could point out any specific event of financial corruption or could fix responsibility upon any of the respondents to this effect, whereas, from perusal of the recommendations made by the Investigation Committee, it appears that rise in cost of both the Projects was on account of delay caused in the completion of the above Projects, which was result of changes made in the original project plans from time to time by various committees, which amendments were also approved by the various Managing Committee/General Body Meetings also. According to the

learned counsel, none of the respondents, whose Memberships have been terminated by the appellants, was either provided any opportunity to defend the allegations of corruption and corrupt practices nor there has been any material or even finding of the Investigation Committee, which may suggest that the respondents, or any one of them, are beneficiaries of such financial corruption and corrupt practices in any manner. Learned counsel for the respondents has contended that keeping in view the serious nature of allegations of financial corruption against the respondents, who are all reputable citizens of Pakistan and enjoy good reputation in the society, it was the duty of the appellants not only to provide a reasonable opportunity to the respondents to controvert the allegations, but also to get the allegations proved through some competent forum or Court of law before taking such drastic action against the respondents, as according to learned counsel, the impugned action is beyond the Rules and Bye-laws of Karachi Gymkhana as well. It has been prayed that instant High Court Appeals, being devoid of any merits, may be dismissed.

10. The remaining learned counsel appearing on behalf of the respondents, have also adopted the arguments advanced by M/s.Farogh Nasim and Asim Mansoor Khan, Advocates, whereas, Mr. Javed Mir Shaikh, one of the respondents in the instant matters, who was Vice President of the Karachi Gymkhana at relevant point of time, has also supported the contentions of both the learned counsel for the respondents, and has submitted that the manner in which Memberships of the respondents has been Terminated by the appellants, the same is violative of principles of natural justice and

Article 10-A of the Constitution, as no reasonable opportunity has been provided to the respondents before taking such adverse action against them. It has been further contended that appellants have also acted in violation of Rule 30 of the Gymkhana Rules and Bye-laws, as a 30-days prior notice is mandatory for calling Special General Body Meeting of the Gymkhana. It has further been contended that proceedings of Special General Body Meeting were not even conducted by the President of the Gymkhana or the Members of Managing Committee, whereas, the respondents were not confronted with the allegation of corruption and corrupt practices nor it was part of the Agenda that their Membership can be terminated. While concluding his submissions, he has also raised objections on the appointment of Chartered Accountants and Constitution of Investigation Committee against respondents for being violative of Rules and Bye-Laws of Karachi Gymkhana..

11. We have heard the learned counsel for the parties, perused the record with their assistance and have also gone through the impugned Order passed by the learned Single Judge, whereby, the ad-interim relief granted to the respondents has been confirmed, and the applications filed by the respondents under Order XXXIX Rule 1 & 2 CPC as well as the application filed by the appellant under Order XXXIX, rule 4, CPC have been disposed of.

12. Perusal of the impugned Order reflects that the objection with regard to maintainability of the suits filed by the respondents against termination of their Membership of the Gymkhana agitated by the appellants, has been dealt with by the learned Single Judge in the impugned order with particular reference to section 42 of the Specific

Relief Act, 1877, whereas, relevant case law on the subject as cited by the learned counsel for the parties has also been examined. However, no final decision or finding with regard to maintainability of the suits has been recorded in the impugned Order, perhaps for the reason that through the impugned order, the learned Single Judge has only decided the fate of injunction applications filed by the respondents under Order XXXIX, rules 1 and 2, CPC as well as the applications filed by the appellants under Order XXXIX, rule 4, CPC. However, it is evident from the record that the contention of the learned counsel for the appellant with regard to maintainability of the suits has not been approved by the learned Single Judge at this stage of the proceedings, which shows that learned Single Judge was of the opinion that respondents have a locus standi and a prima facie case to file the suits under section 42 of the Specific Relief Act, 1877 and also to seek injunction in terms of section 56 thereof, read with Order XXXIX, rules 1 and 2, CPC. We are also not inclined to record our finding with regard to maintainability of the suits at this stage of the case, as it is not the subject matter of instant High Court Appeals, whereas, the maintainability of the suits can be finally decided by the learned Single Judge in accordance with law. Moreover, any finding recorded by this Court on the point of maintainability at this stage, would adversely affect the case of either party before the learned Single Judge.

13. Now, advertent to the merits of the instant high court appeals, whereby, the impugned order passed by the learned Single Judge on the injunction applications has been assailed by the appellants, it will be appropriate to examine the relevant facts leading to filing the

subject suits; the relief claimed therein, as well as the propriety of granting injunction in favour of the respondents by learned Single Judge through the impugned Order in the instant matters.

14. The respondents, whose Membership of the Karachi Gymkhana has been terminated, were permanent Members of the Gymkhana for last several years, who have also remained the President(s)/Mamber of Managing Committee of Karachi Gymkhana, except Syed Ghazanfar Ali, respondent No.1 in High Court Appeal No.15 of 2016, filed the subject suits, whereby, they have challenged and impugned the letter dated 26.05.2016, whereby, their Memberships of the Karachi Gymkhana has been terminated, Decision of even date by the Special General Body Meeting of Karachi Gymkhana; Report of the Investigation Committee dated 04.12.2015, as well as the Forensic Audit conducted by Ernst & Young Ford Rhodes Sidat Hyder, Chartered Accountants; for being illegal and having been issued in violation of Rules and Bye-laws of Karachi Gymkhana, and also based on mala fide. It will be advantageous to reproduce hereunder the impugned letter dated 26.05.2016, whereby, termination of membership has been communicated to the respondents through Honorary Secretary, Karachi Gymkhana, which appears to have given the ultimate cause of action to the respondents to file the suits, the same reads as under:

“Dear Sir,

As per the resolution adopted at the Special General Body Meeting held on Thursday May 26, 2016, with an overwhelming majority, your membership has been terminated with immediate effect.

Please surrender your and your family membership cards immediately.

*Yours sincerely
(ASIM ADIL SHAH)”*

15. It will equally be relevant to reproduce hereunder the Notices dated 18.5.2016 issued by the Honorary Secretary of Karachi Gymkhana for calling a Special General Body Meeting to be held on 26th May, 2016 under Rule 17(g), in which above decision was taken, the same reads as under:

“A Special General Body Meeting would be held at Karachi Gymkhana on Thursday 26th May 2016 at 7.40 p.m. under rule 17(g) to transact the following business:

Agenda

- 1. To read Notice convening the Meeting.*
- 2. To condone the delay in presentation of the Investment Report by the Investigation Committee constituted in the Special General Body Meeting held on 4th December, 2015.*
- 3. To consider and approve the Investigation Report presented to the Managing Committee by the Investigation Committee, which in turn is being presented to the General Body by the Managing Committee.*
- 4. To take further steps to implement the recommendation of the Managing Committee / Investigation Committee.*
- 5. Any other action as deem fit by the General Body.”*

16. From perusal of the hereinabove impugned letter(s) dated 26.05.2017 issued by Hon. Secretary of Gymkhana to the respondents, whose Membership has been terminated, it appears that resolution adopted at the Special General Body Meeting of Gymkhana held on Thursday, May 26, 2016, has been communicated to the respondents according to which, pursuant to decision by majority of the members present at the Special General Body Meeting, the Membership of the respondents has been terminated with immediate effect, whereas, the respondents have been directed to surrender their Membership cards alongwith Membership cards of their family members. However,

from perusal of the agenda for the Special General Body Meeting of 26.05.2016, it has been seen that “**Termination of the Membership**” of the respondents was not part of the agenda to be considered by the Special General Body. On the contrary, the report of Investigation Committee was to be considered and approved by the Special General Body, whereas, further steps to implement the recommendations of the Managing Committee / Investigation Committee were also part of the agenda. It is surprising to note that the recommendations of the Investigation Committee as contained in their report do not suggest **Termination of the Membership** of the respondents. On the contrary, as per recommendations of the Investigation Committee, most of the members of the Managing Committee/Project Committee, against whom similar allegations were made, have either been absolved from such allegations or it has been recommended that they may be reprimanded for the negligence shown by them during their tenure as member of the Project Committee and Managing Committee of Karachi Gymkhana in respect of construction of Lodges and Driveway Projects in Karachi Gymkhana. The Investigation Committee in its report has classified members of the Project Committee into four categories, however, none of the respondents has been recommended to be expelled from Gymkhana, on the contrary, for members falling in the 4th Category, it has been recommended that their membership may be suspended and further proceedings may be initiated against them as per Gymkhana Rules and Bye-laws, besides taking appropriate action in accordance with law. However, it appears that none of the respondents who have filed above suits fall in the

aforesaid 4th Category, as they have not admitted their guilt or charges of corruption before the Investigation Committee.

17. Record further reveals that the respondents, whose memberships have been terminated, pursuant to above proceedings, were never issued any specific show cause notices requiring them to explain their position with regard to the allegations of corruption and corrupt practices in respect of the subject Projects, nor any proceedings for termination of their membership appears to have been initiated against respondents in terms of Rules and Bye-Laws of Karachi Gymkhana. Appellants appears to have initiated the investigation against the respondents by constituting a Investigation Committee with a task to conduct a fishing and roving inquiry against the respondents on the basis of allegations of corruption and corrupt practices in respect of two construction of Lodges and Driveway projects of Karachi Gymkhana, however, without referring to any provision of Rules and Bye-Laws of Karachi Gymkhana under which, such inquiry or investigation could be authorized on the charges of corruption. It is pertinent to note that membership of a member of Karachi Gymkhana can only be suspended or terminated in terms of Rule 30 of Rules and Bye-Laws of Karachi Gymkhana, however, respondents have never been issued any show cause in terms of Rule 30 for **misconduct**, whereas, term corruption and corrupt practice has not been defined in the Rules and Bye-Laws of Karachi Gymkhana.. It has also come on record that the Project which was initially approved for construction of Lodges, remained subject to amendments and alteration from time to time with the approval of the Managing Committee(s) and by the General Body as well, therefore, it cannot be

ascertained at this stage as to whether the amendments and alterations made in the initial Project, which resulted in delay as well as in the rise of cost of the Project, can be attributed to any particular member of the Project Committee / Managing Committee of Karachi Gymkhana, which continued to change after yearly elections of Karachi Gymkhana. Moreover, the allegations of corruption and corrupt practices are criminal in nature, which includes an element of mens rea, which prima facie, can be determined and established by a competent forum or Court of law after recording evidence. However, in the instant case, it appears that without establishing the charges against the respondents of corruption and corrupt practices through a competent forum or Court of law regarding their guilt, Membership of the respondents has been terminated without providing proper opportunity of being heard to the respondents. It has been further observed that the proceedings and the action taken against the respondents is not in conformity with the Gymkhana Rules and Bye-laws as such Rules and Bye-Laws do not provide for direct Termination of Membership of a member on the allegation of corruption and corrupt practices. Rule 30 of the Gymkhana Rules, however, provides for a mechanism, whereby, in case of **misconduct** by a permanent member of Gymkhana, the President, Vice President or Secretary of the Gymkhana has the authority to request any person whose behavior in his opinion is unbecoming of a gentlemen and a member of the Gymkhana, to leave the Gymkhana premises and thereafter the matter is required to be referred to the Managing Committee at the earliest. The Managing Committee is then authorized to take immediate cognizance of any infraction of the rules

and bye-laws of the Gymkhana and if the member shall persist in an infraction thereof or is found to be guilty of conduct which in the opinion of the President is unworthy of a gentlemen or calculated to cause nuisance to other members or is detrimental to dignity and prestige of the Gymkhana, then the Managing Committee may request such member in writing to resign his membership of the Gymkhana, however, if such member declines to resign or fails to resign within three days of the date of Managing Committee's request to him to do so, the Managing Committee shall refer the matter within four weeks to a Special General Body Meeting to be convened for the purpose.

The Managing Committee is required to furnish to each of the permanent members present in such special general body meeting copies of its report against such offending member who will be entitled to be present at the meeting to give explanation. It has been further provided in the aforesaid rule that opinion of the general meeting shall be obtained by ballot and if the members present in the meeting, by majority of votes decide that the offending member has merited expulsion, such member shall cease to be member of the Gymkhana and intimation thereof shall be sent to him by the Secretary. In the instant matter it appears that none of the respondents were called upon by the Managing Committee of Gymkhana to tender their explanation, nor the procedure as provided in the aforesaid rule has been adopted by the appellants. Admittedly, in the aforesaid Special General Body Meeting, whereby decision regarding termination of respondents' membership was taken, no balloting took place. On the contrary, appellants adopted the procedure i.e. show of hands, which does not find any mention in Gymkhana Rules and Bye-

laws. Moreover, termination of membership of the respondents was not even part of the agenda for such Special General Body Meeting held on 26.05.2016.

18. The appellants have not been able to refer to any rule / bye-law of Gymkhana whereby the membership of a permanent member could be terminated in such manner and that too on the charges of corruption and corrupt practices which, in our view, are charges of criminal in nature and can only be established by a proper forum, if constituted for such purpose as per Rules and Bye-Laws, or by a competent Court of law, in accordance with law. Such exercise appears to have not been undertaken by the appellants before taking an extreme adverse action of termination of membership of respondents in the instant matter, therefore, the aforesaid proceedings against the respondents are in violation of principle of natural justice, Rules and Bye-Laws of Karachi Gymkhana and cannot otherwise be considered free from doubt and conclusive in nature, doubt unless proper evidence is recorded in this regard. Since the suits filed by the respondents against their termination of membership are still pending disposal before the learned Single Judge, to be decided in accordance with law after recording of evidence, whereas, respondents appears to have made out a prima facie case before the learned Single Judge, seeking injunctive relief, therefore, the learned Single Judge, while exercising discretion vested in him, after having taken into consideration the necessary ingredients required for grant of injunction, i.e. prima facie case, balance of inconvenience and irreparable loss and injury, has passed the impugned order on such injunction applications, which prima facie does not suffer from any

factual error or legal infirmity. It may be observed that while hearing an appeal against an order passed on injunction application, this court has to examine as to whether, while granting such discretionary relief in terms of Order XXXIX rules 1 and 2 CPC, the learned Single Judge has taken into consideration the above factors or not, and cannot examine the entire merits of the case, which have to be decided by the learned Single Judge after recording evidence in accordance with law. Reliance in this regard can be made to a Division Bench judgment of this Court in the case of *Muhammad Saad and another v. Amna and 27 others* [2015 Y L R 1], wherein, it has been held as under:-

“17. While seeking a favourable injunctive relief the applicant is to prove the prima facie existence of the right claimed in the suit and also its infringement. But the mere fact that a prima facie case has been established will not entitle the applicant to an injunction unless the other two factors i.e. balance of convenience and irreparable damage or injury, are fulfilled. The Court is required to balance the inconvenience and to see as to whether applicant will suffer more inconvenience by the withholding of the injunction than that which the respondent would suffer by granting of injunction. The Court is further required to weigh the mischief of either party in case of grant or refusal of the injunction. Normally the balance lies in favour of continuation of a state of things, such as to protect the possession of a party or to allow the continuance of a contract. Similarly, while granting injunction or otherwise it has to be ensured that the grant of injunction to one party may not cause irreparable damage or injury to the other party whose loss cannot be compensated in terms of money.”

19. In view of hereinabove facts and circumstances of the case, we have dismissed the above High Court Appeals vide our short order dated 26.02.2018 in the following manner:

“For the reasons to be recorded later on, High Court Appeal Nos. 310 to 315 of 2016 are dismissed alongwith listed applications. However, parties are directed to approach the Court of learned Single Judge with proposed issues on the next date of hearing, whereas, learned Single Judge, after framing of issues and recording evidence shall decide the suits preferably, within a period of six (6) months from the date of framing issues, provided no party shall seek unnecessary adjournments.”

20. Above are the reasons for the said short order.

21. It is, however, clarified that observations made hereinabove are tentative in nature and would not affect the merits of the case/suits, which may be decided in accordance with law, whereas, appellants will be at liberty to raise all such objections, including maintainability of suit(s) in accordance with law before the learned Single Judge.

JUDGE

JUDGE