

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.328 of 2023

Muhammad Qasim Pathan and another
Versus
Karachi Gymkhana and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Jawad Akbar Sarwana

Fresh Case

1. For orders on office objection/reply at "A".
2. For hearing of main case.
3. For orders on CMA No.4038/2023 (stay).

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Dated 15.11.2023

Mr. Saadi Sardar, Advocate for the Appellants.

Mr. Ahmed Masood, Advocate for Respondent No.1.

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Muhammad Shafi Siddiqui, J.- On issuance of suspension letters dated 1st March, 2022, appellants have filed a suit [Suit No.1374/2022] along with an injunction application whereby they sought restraining orders from taking further steps in pursuance of the aforesaid suspension letters. The letters of suspension dated 1st March, 2022 are available at page-43 and 45 and for convenience reproduced as under:-

*FROM
THE SECRETARY OFFICE*

Ref: KG/IR-Z(00-5670-2)/2022/320/2022 1st March 2022

*Mr. Qasim Pathan
Membership No.00-5670*

Subject: Suspension of Karachi Gymkhana Membership

*Ref: Karachi Gyumkhana letter No.KG/IR-Z(00-5670-1)/2022
dated 7th January, 2022*

Dear Sir,

The Managing Committee in its Meeting held on 18th February, 2022 discussed your case in the light of stated letter and asked you to immediately resign from the membership of Karachi Gymkhana, failing which, your case will be taken to the Special General Body Meeting for termination from permanent membership, till such time, your membership status will remain SUSPENDED under Club Rule 30.

Further, our letter No.KG/IR-Z(00-5670-1/2022 dated 7th January 2022 stands cancelled.

You are hereby directed to surrender your and your family membership cards in the undersigned office, immediately.

Yours,

Sd/-

Lt. Col (Retd)

Ali Faraz TI(M)

Secretary

2. The process commenced under Club Rule-30, whereas, injunction was obtained which has halted the process required to be conducted under the Club Rules. The impugned order disposes off the application and has essentially referred to a forum for its adjudication as required under the law is reproduced as under:-

At the very onset, learned counsel for the plaintiffs was confronted with the prima facie anomaly of declared parentage, as demonstrated from the court file, however, he remained unable to provide any cogent justification in such regard. It is learned counsel's only contention that mere suspension could have been awarded to the plaintiffs and upon conclusion of that period, no further proceedings/penalty were merited. At this initial stage, the Court finds itself unable to sanction such a proposition as the same does not appear to be sustainable from Rules & By-Laws under consideration.

On the other hand, learned counsel for the defendant submits that a serious prima facie case of misrepresentation / fraud by the plaintiffs is manifest, and under such circumstances, it is only just and proper that the methodology prescribed vide the Rules & By-Laws of the club, Rule 30 in specific, be followed. Learned counsel submits that the proceedings against the plaintiffs shall be in due accordance with the law and there is no reason for such proceedings to be continually held in abeyance.

The primary issue appears to be the parentage of the plaintiffs and the manifest anomaly in such regard could not be justified by the plaintiffs' counsel before this Court. The Rules require such matter to be addressed in terms of the prescription thereof and the same ought not to be postponed or jurisdiction of the relevant forum prescribed be assumed by anybody else. It is also noted that the Rule 30 provides ample opportunity for the plaintiffs to present their case/defense and under such circumstances no case is made out to stay the due process of the law.

The veracity of any allegation levelled has to be determined before the forum designated in such regard by the Rules & By-Laws, to which all members and the

club are privy. It is nobody case that the jurisdiction of that forum may be assumed by another.

The dispute resolution mechanism of a members' club is essentially a domestic matter and it has been held that Courts would not interfere unless it is demonstrated that the rules were opposed to natural justice and / or were not followed; there was manifest malice or mala fides in arriving at a decision; and / or the principles of natural justice were ignored. Wahiduddin Ahmed J (as he then was) maintained that barring the presence of the aforesaid ingredients, no jurisdiction could be assumed by a civil court in disciplinary matters of a club. The aforementioned ratio was maintained in a subsequent pronouncement of this Court, being Jahangir Moghul, however, jurisdiction was assumed by the court as an ultimate arbiter of questions of law, predicated upon a substantiated assertion that interpretation of the relevant rules was being undertaken in a manner dissonant with the law. In the present case there has been no decision and the prescribed process has only begun, hence, no case for interference is made out. It is the observation of this Court that the plaintiffs' counsel has remained unable to satisfy the threshold requisite for grant of interim relief in such club matters.

In conclusion, it is observed that the plaintiffs' counsel failed to demonstrate that the basic ingredients imperative for grant of ad-interim application, i.e. prima facie case, balance of convenience and irreparable loss, therefore, this application is hereby dismissed.

3. We have perused the observations of the learned single Judge minutely which has only referred it to the Club who would assume the jurisdiction to take the dispute to its logical end. Rule-30 of the Club Rules envisages and protects the rights of the Club members. Rule-30(d) is relevant for the purpose of the controversy involved, which is reproduced as under:-

Misconduct

30. (a)

(b)

(c)

(d) If the offender is a permanent member and declines to resign, or fails to resign within three days of the date of the Managing Committees request to him to do so, the Managing Committee shall refer the matter within four weeks to a special general meeting to be convened for the purpose. Pending the decision of the special general meeting the Managing Committee Shall prohibit such member from entering the Gymkhana grounds/ premises. At this meeting permanent members only shall

be present and the Managing Committee shall furnish to each of them a copy of its report against such offending member who will be entitled to be present at the meeting to give any explanation. The opinion of the general meeting shall be obtained by ballot and if the members present at the meeting by a majority of votes decide that the offending member has merited expulsion, he shall cease to be a member of the Gymkhana and notification thereof shall be sent to him by the Secretary.

4. This process or any other rule cannot be bypassed and that is the spirit of the order impugned in these proceedings and there is no reason to interfere in the impugned order which is correct way of exercising a discretion for disposing off interim injunction application involving adjudicating forum such as clubs governed by rules. The instant High Court Appeal as such is dismissed along with pending application(s).

JUDGE

JUDGE

Ayaz Gul