

**Manuel Vivera Vs. The Union of Anglo Indian Associations, represented by its General Secretary, Kevin D Rozario and Others**

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**Court :** Kerala

**Decided On :** Feb-01-2016

**Judge :** P.B. Suresh Kumar

**Appeal No. :** RSA. No. 1121 of 2014

**Appellant :** Manuel Vivera

**Respondent :** The Union of Anglo Indian Associations, represented by its General Secretary, Kevin D Rozario and Others

**Judgement :**

1. The defeated plaintiff in a suit for declaration and injunction is the appellant.
2. The short facts relevant for decision of this second appeal are the following:

The first defendant namely, the Union of Anglo- Indian Association, hereinafter referred to as 'the Union' for short, is an association of Anglo-Indian organizations in the State. As per the Articles of Association of the Union, election to the various offices of the Union is to be conducted once in two years in the annual general meeting of the Union. The plaintiff and the second defendant were elected as the President-in-Chief and the General Secretary of the Union respectively in its annual meeting held on 31.10.2004. After the election, there arose difference of opinion between the plaintiff and the second defendant. While so, on 26.11.2005,

the plaintiff received a letter dated 22.11.2005 from the second defendant stating that he has been removed from the office of the President-in-Chief of the Union as also from the primary membership of the Union by the governing committee of the Union in its meeting held on 22.11.2005. According to the plaintiff, the decision taken by the governing committee of the Union to remove him from the office of the President-in-Chief of the Union as also from the primary membership of the Union is without authority and as such, he continued to function as the President-in-Chief of the Union. Later, as directed by the plaintiff, the acting General Secretary of the Union appointed by him convened the annual general meeting of the Union on 29.10.2006. The second defendant then instituted a suit as O.S.No.1206 of 2006 on behalf of the Union against the plaintiff and the acting General Secretary of the Union appointed by the plaintiff seeking a decree declaring that the meeting proposed by the plaintiff on 29.10.2006 is illegal and improper. It was alleged by the second defendant in the said suit that the plaintiff has already been removed from the office of the President-in-Chief of the Union as also from the primary membership of the Union and that he has, therefore, no authority to convene the annual general meeting of the Union. A decree of permanent prohibitory injunction restraining the plaintiff from convening the meeting scheduled by him on 29.10.2006 was also sought. In the said suit, the second defendant has also filed I.A.No.9924 of 2006 seeking an order of temporary injunction restraining the plaintiff from convening the meeting. In the order passed by the court in the said interlocutory application, it was held that the removal of the plaintiff from the office of the President-in-Chief of the Union as also from the primary membership of the Union is invalid and that he is entitled to continue as the President-in-Chief of the Union. It was, however, held by the court in the order passed in the above interlocutory application that the acting General Secretary of the Union appointed by the plaintiff has no authority to convene the meeting of the Union. Though the second defendant challenged the order in I.A.No.9924 of 2006 in appeal, during the pendency of the said appeal, a fresh election to the offices of the Union took place on 28.1.2007 and consequently, the second defendant did not pursue the said appeal. It is stated by the plaintiff that in the light of the order passed in I.A.No.9924 of 2006 in O.S.No.1206 of 2006, he was also permitted to participate in the election held on 28.1.2007. It is also stated

by the plaintiff that thereafter, an extra-ordinary general body meeting of the Union was convened by the then General Secretary of the Union on 27.8.2008 and the plaintiff was given notice of the said meeting also by the President-in-Chief of the Union in his capacity as a life member of the Union. Later, when the term of the office bearers of the Union elected on 28.1.2007 was due to expire, as per the interim order passed in O.S.No.118 of 2008 dated 24.3.2009, the Munsiff Court, Ernakulam appointed an Advocate Commissioner to conduct fresh election to the offices of the Union based on the voters list prepared for the election held on 28.1.2007. Pursuant to the said order, the third defendant, the Advocate Commissioner appointed by the court in the said suit prepared a draft voters list without including the name of the plaintiff. Though the plaintiff filed objection to the draft voters list, his name did not figure in the final voters list published by the third defendant on 25.3.2010. According to the plaintiff, the Advocate Commissioner did not include his name in the final voters list referred to above for the reason that he was removed from the primary membership of the Union in the meeting of the governing committee of the Union held on 22.11.2005. The suit was filed, in the circumstances, seeking a decree declaring that the decision of the governing committee of the Union dated 22.11.2005 in removing him from the primary membership of the Union is without authority and illegal. The plaintiff has also sought a decree declaring that he is a life member of the Union. A decree of mandatory injunction directing the third defendant to include the name of the plaintiff in the final voters list of the members of the Union for the proposed election to the offices of the Union was also sought.

3. The defendants resisted the suit contending mainly that the plaintiff had earlier filed a suit as O.S.No.149 of 2006 seeking substantially the same reliefs sought in the present suit and that since the said suit was withdrawn without obtaining the leave of the court to institute a fresh suit on the same cause of action, the present suit is barred by sub-rule 4(b) of Rule 1 of Order 23 of the Code of Civil Procedure. They also contended that the suit is barred by limitation. As regards the merits of the claim of the plaintiff, the defendants disputed the case of the plaintiff that he is still a life member the Union. The trial court found that the suit is barred by sub-rule 4(b) of Rule 1 of Order 23 of the Code of Civil Procedure. The trial court also found that the suit instituted in the year 2010 seeking a declaration in respect of a

decision of the governing committee of the Union which was communicated to him in the year 2005, is barred by Limitation. Consequently, the suit was dismissed, without considering the rival contentions raised by the parties as to the merits of the claim of the plaintiff. The plaintiff took up the matter in appeal. The appellate court though reversed the finding of the trial court that the suit is barred by sub-rule 4(b) of Rule 1 of Order 23 of the Code of Civil Procedure, confirmed the finding of the trial court that the suit is barred by limitation. Consequently, the appeal was dismissed. The plaintiff who is aggrieved by the concurrent decisions against him has thus come up in this second appeal.

4. Heard the learned counsel for the appellant as also the learned counsel for the respondents.

5. The learned counsel for the appellant contended that since the decision impugned in the suit was held to be illegal in the interlocutory order passed in O.S.No.1206 of 2006 and since the plaintiff was treated as a life member the Union thereafter by the defendants for all purposes, there was no compulsion at all for the plaintiff to institute a suit in the year 2005 or thereafter. According to the learned counsel for the appellant, it was only when the name of the plaintiff was omitted to be included in the draft voters list published by the third defendant for conduct of election to the offices of the Union and when his objection to the draft voters list was overruled by the third defendant thereafter, the cause of action to institute a suit of this nature accrued to the plaintiff. According to the learned counsel, the suit instituted within three years from the date of publication of the final voters list for election to the offices of the Union overruling the objections to the draft voters list raised by the plaintiff is perfectly within the period of limitation. Per contra, the learned counsel for the defendants contended that the view taken by the courts below for non-suiting the plaintiff on the ground of limitation is perfectly in order.

6. It is beyond dispute that the Article governing the present suit is Article 58 of the Schedule to the Limitation Act. Going by the said Article, a suit of this nature is to be instituted within three years from the date on which the right to sue first accrues to the plaintiff. In *Mt. Bolo v. Mt. Koklan and others* (AIR 1930 PC 270), it was held

that there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant. In *Rukhmabai v. Laxminarayan* (AIR 1960 SC 335), following *Mt. Bolo v. Mt. Koklan and others*(supra), the Apex Court restated the law in the context of Article 120 of the Limitation Act, 1908, corresponding to Article 58, thus :

The legal position may be briefly stated thus : The right to sue under Art. 120 of the Limitation Act accrues when the defendant has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a participate gives rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardizes the said right.

True, while enacting Article 58 of the Limitation Act, 1963, the legislature has made a departure from the language used in Article 120 of the Limitation Act, 1908. The word 'first' has been used in Article 58 in between the words 'sue' and 'accrued'. The effect of this legislative change is only that if the suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. In other words, suits of this nature are to be instituted within three years from the time when the right asserted in the suit was invaded or jeopardized by the defendants for the first time or when there has been a clear and unequivocal threat which compels the plaintiff to institute the suit.

7. In the light of the aforesaid principles, the following question of law was formulated for decision in the second appeal:

When does the right asserted by the plaintiff in the suit, namely, that he is a life member of the Union has been invaded or jeopardized by the defendants?

As noted above, in the order passed by the court in the interlocutory application for injunction filed in O.S.No.1206 of 2006, it was held that the removal of the plaintiff from the primary membership of the Union is unauthorized. Ext.A17 is the said order. True, the suit in which the said interlocutory order was passed was later

dismissed as not pressed. But, Ext.A17 order has been accepted by the defendants and the plaintiff was permitted to participate in the election held thereafter to the offices of the Union on 28.1.2007. Ext.A18 is the communication issued to the plaintiff in that connection by the second defendant who was the then General Secretary of the Union. Ext.A20 is a communication issued to the plaintiff by the President-in- Chief of the Union on 2.1.2008. As per the said communication, the plaintiff was given notice of the extra ordinary general body meeting of the Union proposed on 27.1.2008. Ext.A20 indicates that the said communication has been given to the plaintiff by the President-in-Chief of the Union in his capacity as a life member of the Union. In the light of the said facts, it cannot be said that the plaintiff was under any compulsion to institute a suit of the present nature immediately after the decision impugned in the suit. In other words, in so far as the defendants have treated the plaintiff as a life member of the Union even after the decision of the governing committee of the Union dated 22.11.2005 which is impugned in the suit, it can only be said that a cause of action to institute a suit of this nature accrued to him when the defendants jeopardised the right of the plaintiff as a life member of the Union by excluding him from the voters list published for election to the offices of the Union. True, in Ext.A18 communication, it is stated that the Union maintains the stand that the plaintiff is not its member and that he is given permission to participate in the election in the light of Ext.A17 order. It is interesting to note that the stand of the Union as stated in Ext.A17 is not reiterated in Ext.A20. The defendants have also no case that the plaintiff was given any communication thereafter as to the status of his membership. In the aforesaid circumstances, I have no hesitation to hold that the right to sue accrued to the plaintiff only when his name was omitted to be included in the draft voters list published by the third defendant and when his objection against the draft voters list has been overruled during 2010. The dismissal of the suit on the ground of limitation, in the circumstances, is unsustainable in law. The question of law formulated for decision is thus answered in favour of the plaintiff.

In the result, the second appeal is allowed, the impugned decisions of the courts below are set aside and the suit is remitted to the trial court for fresh disposal. In the peculiar facts and circumstances of this case, I deem it appropriate to direct the trial court to dispose of the suit finally within 3 months from the date of receipt

of the copy of this judgment.

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