

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.174637 of 2018

The Lahore Polo Club Vs. Additional District Judge etc.

Sr. No. of order/ proceeding	Date of order/ Proceeding	Order with signatures of Judge, and that of Parties or counsel, where necessary
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09.03.2018 M/s Taffazul Haider Rizvi and Muhammad Usman, Advocates for the petitioner
M/s Imtiaz Rasheed Siddiqui and Shehryar Qusoori, Advocates for the respondent No.3

C.M.Nos.2 & 3 of 2018

Through this application the applicant seeks permission to place on record certain additional documents and second application is for dispensation.

2. Allowed subject to all just and legal exceptions.

Main Petition

Succinctly, the petitioner was incorporated on 06.06.1934 under the Companies Act, 1913 presently existing under the Companies Act, 2017. The respondent No.3 was a member of the petitioner Company but due to demeanour of the respondent No.3 in the past his membership was suspended, which was only restored upon his assurance to amend his ways but all this proved to be wishful thinking. The respondent No.3, once again, allegedly indulged in transgression due to which on 03.12.2017, the Secretary of the petitioner issued a Notice calling a meeting of the Disciplinary Committee to look into the misconduct of the respondent No.3 and gave its recommendations, in the meanwhile on 06.12.2017 his (respondent No.3's) membership was suspended. The recommendations of the Disciplinary Committee were considered by the Executive Committee on 12.12.2017, in

which the respondent No.3 was also present as a Regular member rather he despite asking refused to recuse himself from the meeting. The Executive Committee approved the suspension of the respondent No.3 and a suspension letter was issued to the said effect on 18.12.2017. A Notice for calling an Extraordinary General Meeting was issued on 18.12.2017, in the meanwhile a requisition was also submitted by 14 Regular Members for calling of an Extraordinary General Meeting, which was convened on 09.01.2018 and the respondent No.3's membership was terminated by the requisite majority in the Extraordinary General Meeting as per Article 7(1) of the Articles of Association of the Company and his name stands removed from the Register of Members and Form 29 in this regard has also been submitted to the Securities & Exchange Commission of Pakistan.

The respondent No.3 instead of accepting his fate under the Companies Act, 2017 approached the Civil Court and instituted a suit for declaration, permanent and mandatory injunction with consequential relief titled "*Naveed M. Sheikh v. The Honorary Secretary of the Lahore Polo Club etc.*" The present petitioner entered appearance and at the outset raised objection to jurisdiction by the Civil Court but vide impugned order dated 18.01.2018, the learned Civil Judge overruled the objection with regard to his jurisdiction and held that Civil Court has jurisdiction to entertain the lis in hand. Being aggrieved of the said order, the petitioner filed a revision petition, but the learned Additional District Judge vide impugned order dated 26.02.2018 dismissed the same; hence, the instant constitutional petition.

2. Main thrust of the learned counsel for the petitioner is on the ground that the Civil Court has no jurisdiction to entertain suit as the incorporated entities and all matters pertaining thereto are tried and adjudicated upon under

the Special Law i.e. The Companies Act, 2017, because it is an established principle that a special law overrides the general law and section 4 of the Act *ibid* expressly overrides any other law; therefore, except the Company Bench of this Court no other Court has the jurisdiction to entertain any lis pertaining to an incorporated entity. He has prayed for acceptance of the constitutional petition in hand, setting aside of the impugned orders and return of plaint of the suit instituted by the respondent No.3 under Order VII, Rule 10 of the Code of Civil Procedure, 1908. Relies on *Brother Steel Mills Ltd. and others v. Mian Ilyas Miraj and 14 others* (PLD 1996 Supreme Court 543), *Lahore Race Club through Secretary and others v. Raja Khushbakht-Ur-Rehman* (PLD 2008 Supreme Court 707), *Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd., Lahore and others* (2016 SCMR 213) (2016 CLD 393), *State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others* (2017 CLD 1080-Supreme Court of Pakistan), *Syed Mushahid Shah and others v. Federal Investment Agency and others* (2017 CLD 1198-Supreme Court of Pakistan) and *Muhammad Yasin Fecto and another v. Muhammad Raza Fecto and 3 others* (1998 CLC 237-Karachi).

3. On the contrary, learned counsel representing the respondent No.3 have supported the impugned orders by arguing that the orders sought to be declared illegal through suit for declaration are based on mala fide, therefore, the Civil Court, being Court of plenary jurisdiction, enjoys the powers and jurisdiction to entertain the suit; thus, the learned Courts below have rightly exercised vested jurisdiction. The instant constitutional petition may be dismissed. Reliance has been placed on *D.M. Malik v. Jockey Club of Pakistan and others* (PLD 1960 (W.P.) Karachi 325), *Khawaja Muhammad Saeed v. Mr. Justice Shabbir Ahmad and 12 others* (PLD 1965 (W.P.)

Lahore 92), Mr. Muhammad Jamil Asghar v. The Improvement Trust, Rawalpindi (PLD 1965 Supreme Court 698), Messrs Chalna Fibre Company Limited, Khulna and 4 others v. Abdul Jabbar and 9 others (PLD 1968 Supreme Court 381), Muhammad Akram v. Mst. Farman Bi (PLD 1990 Supreme Court 28), Mian Ejaz Siddique and others v. Mst. Kaneez Begum and 2 others (1992 CLC 1658-Lahore), Abbasia Cooperative Bank (Now Punjab Provincial Cooperative Bank Ltd.) through Manager and another v. Hakeem Hafiz Muhammad Ghaus and 5 others (PLD 1997 Supreme Court 3), Muhammad Yasin Fecto and another v. Muhammad Raza Fecto and 3 others (1998 CLC 237-Karachi), Federation of Pakistan and others v. Messrs Saman Diplomatic Bonded Warehouse (2004 PTD 1189-Karchi High Court), Hakam and others v. Tassadaq Hussain Shah (PLD 2007 Lahore 261), Abdul Majeed and 5 others v. Province of the Punjab through District Collector, Layyah and 4 others (2010 CLC 146-Lahroe), Abdul Ghafar Jangda v. Haji Abdullah Haroon Muslim Gymkhana and 11 others (2011 YLR 2907-Karachi), ICI Polyester Employees Union (CBA) Registered v. Trustees Union and 2 others (2013 CLD 108) and Sohail Najeeb v. Ministry of Finance and others (2014 CLD 848-Islamabad).

4. Heard.

5. It is settled principle by now that Courts generally refuse to interfere in the decision of a club on disciplinary matters if given without any irregularity in procedure unless it is proved either that the rules were opposed to natural justice or that they were not properly followed or that there was malice or mala fides in arriving at the decision or that principles of natural justice were not being followed. Thus, the jurisdiction of the Court in such cases is limited within a very narrow compass and if the Managing Committee of a Club or an Association has acted bond fide and honestly, followed the

principles of natural justice and has reasonably construed its rules in their application to the aggrieved party, the Civil Courts have no jurisdiction to interfere in a matter where disciplinary action is taken against its members.

In the present case, it is evident from the facts of the case that the respondent No.3's membership was cancelled and his name was removed from the Register of Members of the Company after giving him opportunity of hearing and to defend his stance before the Executive Committee of the Club and when he refused to recuse himself from the meeting, the Executive Committee approved the suspension of the respondent No.3 and a suspension letter was issued to the said effect on 18.12.2017; whereafter a Notice for calling an Extraordinary General Meeting was issued on 18.12.2017, in the meanwhile a requisition was also submitted by 14 Regular Members for calling of an Extraordinary General Meeting, which was convened on 09.01.2018 and the respondent No.3's membership was terminated by the requisite majority in the Extraordinary General Meeting as per Article 7(1) of the Articles of Association of the Company and his name was removed from the Register of Members and Form 29 in this regard was also submitted to the Securities & Exchange Commission of Pakistan. Section 4 of the Companies Act, 2017 reads:-

'4. Act to override.—Save as otherwise expressly provided herein---

(a) the provisions of this Act shall have effect notwithstanding anything contained in any other law or the memorandum or articles of a company or in any contract or agreement executed by it or in any resolution passed by the company in general meeting or by its directors, whether the same be registered, executed or passed, as the case may be, before or after the coming into force of the said provisions; and

(b) any provision contained in the memorandum, articles, contract, agreement, arrangements or resolution aforesaid shall, to the

extent to which it is repugnant to the aforesaid provisions of this Act, become, or be, void, as the case may be.'

Section 5 of the Act *ibid* reads:-

‘5. Jurisdiction of the Court and creation of Benches.—(1) *The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate.*

(2). Notwithstanding anything contained in any other law no civil court as provided in the Code of Civil Procedure, 1908 (Act V of 1908) or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Court is empowered to determine by or under this Act.

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The above provision of law expressly bars jurisdiction of Civil Court in the matters pertaining of Company matters and word “shall” has been used in the same, which makes is mandatory, especially when there appears no mala fide or ill-will on the part of the Executive Committee of the Club, who, as stated above, has followed the rules after submission of requisition by 14 Regular Members for calling of an Extraordinary General Meeting, convened on 09.01.2018 and terminated the member of the respondent No.3 by the requisite majority in the Extraordinary General Meeting as per Article 7(1) of the Articles of Association of the Company/Club and his name stands removed from the Register of Members and Form 29 in this regard has also been submitted to the Securities &

Exchange Commission of Pakistan. Since the name of the respondent No.3 has been cancelled and his name has been removed from the Register of the Members of the Company, and Form 29 has already been submitted to the SECP, the matter strictly falls within the ambit of Companies jurisdiction, because it has converted to “rectification of the Register”, which instance is dealt with under section 126 of the Act *ibid*, which provides:-

‘126. Power of Court to rectify register.—(1) If—
(a) *the name of any person is fraudulently or without sufficient cause entered in or omitted from register of members or register of debenture-holders of a company; or*
(b) *default is made or unnecessary delay takes place in entering on the register of members or register of debenture-holders the fact of the person having become or ceased to be a member or debenture-holder;*
the person aggrieved, or any member or debenture-holder of the company, or the company, may apply to the Court for rectification of the register.’

The “Court” in the above section 126 of the Act is the Company Judge of the High Court as has been provided in section 5 of the Act *ibid*. Reliance is placed on *Lahore Race Club through Secretary and others v. Raja Khushbakht-Ur-Rehman* (PLD 2008 Supreme Court 707), *Mehran Ginning Industries etc. v. Sajid Shafique etc.* (2017 CLD 1165), and *Brother Steel Mills Ltd. and others v. Mian Ilyas Miraj and 14 others* (PLD 1996 Supreme Court 543) wherein it was held:-

“The proceedings under the Ordinance are initiated in the High Court as a Court of first instance. While exercising such jurisdiction it has the characteristics and attributes of the original jurisdiction.”

6. In addition to the above, Section 4 of Part-A of Chapter 2 of the Volume-I of the Rules and Orders of the Lahore High Court, Lahore provides:-

“4. Special Jurisdiction.—Under certain enactments, Courts of Civil Judges have no jurisdiction at all to take cognizance of proceedings under those enactments e.g. the Companies Ordinance, 1984 (XLVII of 1984), the Banking Companies Recovery of Loan Ordinance (XIX of 1979), the West Pakistan Family Courts Act, (XXXV of 1964), etc. There are proceedings under certain other enactments of which Civil Judges can take cognizance if specifically empowered in that behalf e.g. section 4-A of the Guardian and Wards Act, 1890, read with section 25 of the West Pakistan Family Courts Act, 1964.’

This matter has been resolved once and for all in judgments reported as Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd., Lahore and others (2016 SCMR 213).

7. Apart from the above, it is, by now, settled principle of law, that provisions of special law always override the provisions of general law to the extent of any conflict or inconsistency between the two. In this regard reliance is placed on Syed Mushahid Shah and others v. Federal Investment Agency and others (2017 CLD 1198-Supreme Court of Pakistan) and State Life Insurance Corporation of Pakistan through Chairman and others v. Mst. Sardar Begum and others (2017 CLD 1080-Supreme Court of Pakistan) wherein it has invariably been held:-

*‘Hence where a Special law determines a place of suing, which in the present case in terms of section 2(6) could be either the principal Civil Court of Original jurisdiction in a district or the special Civil jurisdiction of the Sindh High Court and Islamabad High Court, the same would prevail over the provisions of section 15 of the Code of Civil Procedure. It is now trite law that the provisions of special law always override the provisions of the general law to the extent of any conflict or inconsistency between the two.-----

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8. For the foregoing reasons, when there appears no mala fide and malice on the part of the Executive Committee in cancelling the membership and removing the name of the respondent No.3 from the Register, the Civil Court has no jurisdiction to entertain the suit as the High Court being Court of first instance has the jurisdiction to deal with such matters as has been provided under section 5 of the Companies Act, 2017. The learned Courts below have misconstrued law on the subject and have wrongly exercised jurisdiction vested in them.

9. So far as the case law relied upon by the learned counsel for the respondent No.3, with utmost respect, has no relevance to the peculiar facts and circumstances of the case in hand, as has been discussed above; therefore, it does not render any assistance or help to the respondent No.3's case, being distinguished one.

10. In view of the above, the constitutional petition in hand is allowed, impugned orders are set aside and the plaint in suit instituted by the respondent No.3 is ordered to be returned under Order VII, Rule 10 of the Code of Civil Procedure, 1908 for its presentation before the Court of competent jurisdiction, if desired and advised. No order as to the costs.

(Shahid Bilal Hassan)
Judge

M.A.Hassan

Announced in open Court on 30.03.2018.

Judge