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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.92 OF 2023

IN

INTERIM APPLICATION (L) NO.28477 OF 2021

IN

SUIT (L) NO.28463 OF 2021

1	Manu Seoram Dadlani]	
	Age 76, of Mumbai, Indian Inhabitant, 301]	
	Exotique, 17 th Road, Khar, Mumbai 400 052 .]	
2	Kewal Kundanlal Handa]	
	Age 70 of Mumbai, Indian Inhabitant, Nair]	
	House, 9 th Floor, 14B Road, Khar W,]	
	Mumbai 400 052.]	
3	Yogesh G. Talwar]	
	Age 65 of Mumbai, Indian Inhabitant]	
	Diamond Palace, Hill Road, Bandra W,]	
	Mumbai 400 050.]	
4	Rajesh Anshi Gursahani]	
	Age 54 of Mumbai, Indian Inhabitant]	
	Flat No.1001, Link Palace, 10 th Floor,]	
	Linking Road, Santacruz W, Next to Levi's]	
	Showroom, Mumbai 400 054.].. Appellants	
	(Orig. Plaintiff Nos. 3 to 6)	

Versus

1	Shyam G. Shroff, individual]	
	Indian Inhabitant, having his]	
	address, 2/4, Citi Mall, New Link]	
	Road, Andheri West, Mumbai 400 053]	
2	Vivek Devnani, individual, Indian]	
	Inhabitant, in his capacity as President]	
3	Amarjit Singh, individual, Indian]	
	Inhabitant, in his capacity as Hon.]	
	Treasure]	
4	Haresh Masand, individual, Indian]	
	Inhabitant, in his capacity as Hon.]	

	Treasure]
5	Gaurav Kapadia, individual, Indian Inhabitant, in his capacity as Hon. General]
	Secretary]
6	Sanjay Bachani, individual, Indian Inhabitant, in his capacity as Hon. General Secretary]
7	Sarika Jain, individual, Indian Inhabitant in her capacity as Committee Member]
8	Gautam Chande, individual Indian Inhabitant, in his capacity as Committee Member]
9	Shraddha Bachani, Individual Indian Inhabitant, in her capacity as Committee Member]
10	Kirnay Bhatt, individual Indian Inhabitant in his capacity as Committee Member]
11	Purnima lakhiani, individual Indian Inhabitant, in her capacity as Committee Member]
12	Sanjay Devnani, individual Indian Inhabitant, in his capacity as Committee Member]
13	Vikas Kerkar, individual, Indian Inhabitant in his capacity as Committee Member]
14	Manal Shroff, individual Indian Inhabitant in his capacity as Committee Member]
15	Dhruv Kohli, individual Indian Inhabitant in his capacity as Committee Member]
16	Vedd Rawtani, individual Indian Inhabitant in his capacity as Committee Member]
17	Sahib Lamba, individual Indian Inhabitant in his capacity as Committee Member]
18	Inderpal Gujral, individual Indian Inhabitant in his capacity as Hon. Secretary Badminton]
19	Bela Kotwani, individual Indian Inhabitant in her capacity as Hon. Secretary Badminton]
20	Kaushal Ghanshani, individual Indian Inhabitant, in his capacity as Hon. Secretary Squash]

21 Jitendra Makhija, individual Indian Inhabitant, in his capacity as Hon. Secretary Gymnasium]

22 Deepak Mehta, individual Indian Inhabitant in his capacity as Hon. Secretary Table Tennis]

23 Lavin Khemani, individual Indian Inhabitant in his capacity as Hon. Secretary Tennis]

24 Amit Majmudar, individual Indian Inhabitant in his capacity as Committee Member Cricket]

25 Sanjay Modi, individual Indian Inhabitant in his capacity as Committee Member Cricket]

26 Ashish Parulekar, individual Indian Inhabitant in his capacity as Committee Member Cricket]

27 Ashok Aswani, individual Indian Inhabitant in his capacity as Hon. Secretary Cardroom]

28 Neil Thakur, individual Indian Inhabitant in his capacity as Hon. Secretary Pickleball]

29 Harsh Pherwani, individual Indian Inhabitant in his capacity as Hon. Secretary Billiard & Snooker] Respondent Nos. 2 to 29 being the Managing Committee of Khar Gymkhana] having their office address at 13th Road, Khar (West), Mumbai 400 052.]

30 Ashok Mohnani]

31 Arvind Yenamaddi]

32 Swapnil Akut] Respondent Nos. 30 to 32 being members of Khar Gymkhana, having their office address at 13th Road, Khar (West), Mumbai 400 052.] .. Respondents. 1 to 32/ Original Defendant Nos. 1 to 32.

33 Khar Gymkhana, a trust having its registered office at 13th Road, Khar (West) Mumbai 400 052.]

34 Ashok Gowariker, individual, Indian Inhabitant, having his address at 1st Floor,]

Kumkum, 16th Road, Khar (West)]
Mumbai 400052.].. Respondents/
(Orig. Plaintiff Nos. 1 & 2)

**Adv. Joaquim Reis, Adv. Rushabh Sheth, Adv. Sayeed Y. Mulani and
Adv. Tushar Agrawal i/b. Mulani and Co., for the Appellants.**

**Adv. Malcolm Siganporia with Adv. Ahsan Allana i/b. J. Sagar
Associates, for Respondent Nos. 2 to 11 and 13 to 29.**

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

**RESERVED ON: JANUARY 16, 2026
PRONOUNCED ON: FEBRUARY 12, 2026.**

JUDGEMENT (Per F. P. Pooniwalla, J):-

1 This Appeal challenges an Order dated 25th August, 2022 passed by the Learned Single Judge in Interim Application (L) No. 28477 of 2021 in Suit (L) No. 28463 of 2021, rejecting the said Interim Application.

FACTS

2 Before we deal with the rival submissions of the parties, it would be appropriate to set out the brief facts in the matter:-

(a) By a Requisition letter dated 1st November, 2021, 180 members of the Khar Gymkhana (Respondent No.33) called upon the existing Trustees to tender their respective resignations on account of

allegations against them, failing which, the Managing Committee was called upon to convene a Meeting for removal of the Trustees and for appointment of new Trustees.

- (b) On 16th November, 2021, a notice was issued for holding the 89th Annual General Meeting of Khar Gymkhana on 19th December, 2021.
- (c) On 25th November, 2021, one of the five existing Trustees, Mr. Bomi Mehta, tendered his resignation.
- (d) On 29th November, 2021, another existing Trustee, Mr. Suresh Prabhu, tendered his resignation.
- (e) By a letter dated 1st December, 2021, Appellant No.1, on behalf of the Board of Trustees of Khar Gymkhana, informed Appellant No.3 that he was appointed as a Trustee.
- (f) Further, by a letter dated 2nd December, 2021 addressed by Appellant No.1 on behalf of the Board of Trustees, he informed Appellant No.4 that he was appointed as a Trustee.
- (g) By a letter dated 3rd December, 2021 addressed to Respondent No.1, Appellant No.1 informed him about the appointment of Appellant No.3 and Appellant No.4 as Trustees.
- (h) On 6th December, 2021, the present Suit was filed along with Interim Application (L) No. 28477 of 2021.

- (i) On 7th December, 2021, another existing Trustee – Mr. Ashok Gowariker (Respondent No.34) tendered his resignation.
- (j) On 14th December, 2021, one Mr. Sanjay Devnani (Respondent No.12) was appointed as a Trustee by the remaining Trustees.
- (k) By an e-mail dated 16th December, 2021 addressed by Respondent Nos.2 to 11, and 13 to 29's Advocates, they called upon the Appellants' Advocate for inspection of the Resignation letters issued by Mr. Bomi Mehta and Mr. Suresh Prabhu as well as the Minutes of Meeting of the Trustees accepting their resignations.
- (l) By an Order dated 17th December, 2021 passed in the aforesaid Interim Application, this Court permitted the Annual General Meeting to be held, and directed that the new Trustees elected would be subject to certain restrictions as per paragraph 17 of the said Order.
- (m) Appellant No.3 addressed a letter dated 18th December, 2021 to Respondent No.12, informing him that, at the Meeting of the Trustees of Khar Gymkhana, held on 14th December, 2021, Respondent No.12 had been elected as a Trustee of the Khar Gymkhana.
- (n) On 19th December, 2021, the 89th Annual General Meeting of Khar Gymkhana was held. All the existing Trustees, including the newly appointed Trustees (being Appellant No.3, Appellant No.4 and Respondent No.12), were removed at the said Meeting. Further,

Respondent No.3, Respondent No.24 and Respondent Nos.30 to 32 were appointed as Trustees of Khar Gymkhana.

(o) Thereafter, the Plaintiffs in the Suit sought an amendment to the Interim Application. The amended prayers read as under:-

“(j1):-pending hearing and final disposal of the present Suit, the effect and implementation of the purported resolution with respect of removal of all Co-Trustees passed in said Meeting dated 19th December, 2021 be stayed;

(j2) pending hearing and final disposal of the present Suit, the effect and implementation of the purported resolution with respect to an appointment of Defendant Nos. 3, 24 and 30 to 32 passed in the said Meeting dated 19th December, 2021 be stayed;

(j3) pending the hearing and final disposal of the present Suit, the Defendant Nos. 2 to 11 and 13 to 32, their servants, agents or any person acting on their behalf or through them, be restrained from interfering with the management of the Plaintiff No.1 Trust through the Plaintiff Nos. 3, 4, 5, 6 and Defendant No.12;

(j4) pending hearing and final disposal of the present Suit, the effect and implementation of the purported resolutions passed in said Meeting dated 19th December, 2021 with respect of the extent of amendment of Rules 46(a) and 46(b), be stayed;

(j5) pending hearing and final disposal of the present Suit, the effect and implementation of the purported resolutions in respect of the proposed/ suggested mechanism for appointment of New Trustees and their tenure passed in the said Meeting dated 19th December, 2021, be stayed.”

- (p) At the hearing of the Interim Application, the Plaintiffs pressed for reliefs in terms of the aforesaid amended prayers.
- (q) By the impugned Order dated 25th August, 2022, the Learned Single Judge rejected the Interim Application filed by the Appellants.

SUBMISSIONS OF THE APPELLANTS

3 The Appellants submitted as follows:-

- (a) By the impugned Order, the Learned Single Judge has broadly held that the Trustees could be removed by the General Body under Clause 4 of the Trust Deed read with Rule 41 (f) of the Rules by three- fourths of the members present and voting. The Learned Single Judge held that Clause 7 of the Trust Deed, which requires that if the number of Trustees do not fall below three, the vacancy could be filled by the existing Trustees alone, would not apply in the event that all the Trustees were removed and the new Trustees had to be appointed, as there could be no vacuum in the Trust. The contention of the Plaintiffs that there was no notice given for removal of three of the five Trustees, who were appointed after the date of the Requisition, and after the date of the notice calling for the Meeting, was rejected on the grounds that Item 6 of the Agenda dated 16th November, 2021 stated that the removal of the Trustees had to be considered.

(b) The Requisition notice dated 1st November, 2021 was addressed to remove five named Trustees. It was specifically addressed to these five Trustees and made specific allegations against those individuals seeking their removal. The Requisition is personal to the five Trustees in question, and, therefore, the removal could have been of the five Trustees in respect of whom the Requisition notice was issued, and for whose specific removal, the Meeting was called for on 19th December, 2021. Thus, it was untenable for the Meeting to remove the three new Trustees who were appointed on 1st December, 2021, 2nd December, 2021 and 14th December, 2021 after the aforesaid Requisition dated 1st November, 2021 and the notice for the Meeting dated 16th November, 2021. These arguments were specifically raised and recorded, *inter alia*, in paragraph 36 of the impugned Order but had not been dealt with by the Learned Single Judge, save and except to say that, as Item 6 of the Agenda dated 16th November, 2021 allowed for removal of all Trustees, the Trustees existing on the date of the Meeting could all be removed. This finding entirely misses the point that the Agenda items were also in the context of those named Trustees for whom the Requisition notice had been issued, and therefore, at the highest, the reference to all Trustees could only have been a reference to the five named Trustees to whom the Requisition notice was addressed, and in respect of whom the General Body notice was issued on 16th November, 2021. The three new Trustees were not

given a notice of the intent to remove them nor were they given any opportunity to be heard or to make a representation prior to their removal, nor were any members of the General Body put to notice that these three persons were also to be removed. Had notice been given, potentially, there could have been objections raised to the removal of these three persons, but they were arbitrarily, and in one fell swoop, removed along with the other Trustees who had been named in the Requisition.

(c) The requisitioned Meeting was called for under Rule 62 of the Rules. Even the Respondents had accepted and admitted that the said Meeting was called under Rule 62. Further, Rule 62 specifically contemplates that a requisitioned Meeting should be held by way of a Special General Body Meeting. The Special General Body Meeting has particular facets, including the manner in which voting is done, and, in particular, the fact that at that meeting there is a focused discussion only on the matters set out in the Requisition for which the Meeting is called. The purpose of having a separate Special General Body Meeting for discussing the subject matter of the Requisition is so that the General Body Members are able to focus on that particular issue alone and no resolutions are quickly passed through along with other resolutions such as adoption of accounts and the like, as was done in the present case.

(d) In the present case, what was held was not a Special General Body Meeting but a purported 89th Annual General Body Meeting. There was no need to hold an Annual General Body Meeting merely four months after the previous Annual General Meeting, which was held on 15th August, 2021. Be that as it may, the Rules required the holding of a Special General Body Meeting as admitted by the Respondents themselves. If the Rules require a particular procedure to be followed, then that said procedure may be followed or else the action taken at the Meeting is vitiated and ought to be set aside. This argument was raised specifically and recorded in paragraphs 37 and 43 of the impugned Order and has not been dealt with by the Learned Single Judge.

(e) The Requisition notice sought the removal of the existing five Trustees for certain specific allegations against them. While the merits of the allegations need not be gone into, frivolous as they may be, it is pertinent to note that, in the Meeting, there was no finding or conclusion of the General Body that any of those allegations were established. This clearly shows that the removal of the five Trustees was a premeditated action taken in bad faith at the instance of Respondent No.1 with no actual intent to arrive at a conclusion of any misdealing or to even make a pretence of arriving at a conclusion that any of the allegations in the Requisition were made out.

(f) Further, the appointment of the new Trustees was even more perverse. The newly appointed Trustees were not even named in the Agenda notice for the Meeting issued on 16th November, 2021. The said notice contemplated the purported removal of all five Trustees and the bare minimum that was expected was that the proposed new Trustees would be named. This is a very important procedural step as it is imperative for the members to know who the proposed new Trustees were so as to enable them to decide whether to attend the General Body Meeting and/or to vote in their favour or to vote against their appointment.

(g) Under Rule 65, only the matters specified in the Agenda could be discussed, and clearly the appointment of the new Trustees was not a matter that was specified in the Agenda, in so far as the details of the new Trustees were concerned. This argument was specifically raised by the Plaintiffs and recorded in paragraphs 42 and 46 of the impugned Order but has not been dealt with by the Learned Single Judge.

(h) Clause 7 of the Trust Deed specifies that the General Body could only appoint the Trustees if the Trustees have not themselves filled the vacancies within three months, or if the number of Trustees dwindles to below two. At no point of time had the number of Trustees ever dwindled to below two and therefore there was no occasion for the General Body to

appoint any new Trustees. This argument was raised and recorded in paragraph 35 of the impugned Order and has been dealt with by the Learned Single Judge in paragraph 79, only to hold that Clause 7 will not apply to appointment of new Trustees if all the old Trustees are removed. There is no conceivable reason as to why Clause 7 would not apply to allow for the Trustees to appoint new Trustees even in a situation where a Trustee has been removed. It is entirely conceivable that, in a given situation, only one or two Trustees may be removed by the General Body, and if the logic applied by the Learned Single Judge is accepted, then, in the event of such a removal, only a General Body would be entitled to appoint the new Trustees. There is no warrant for this interpretation of Clause 7. Clause 7 speaks of removal for any cause whatsoever and therefore it is entirely untenable for the Learned Single Judge to hold that Clause 7 would have no application when a Trustee was removed by the General Body.

(i) The power of the General Body to appoint the Trustees was only to be exercised in a situation where, some unfortunate events, such as the death of two or three Trustees in quick succession, resulted in the number dwindling to below two, and was never to be misused to cause removal of all Trustees and to simply reinstate the entire Board of Trustees with new Trustees who were obviously favourable for the Managing Committee.

(j) The Learned Single Judge failed to appreciate that the only power for appointment under the Rules was under Clause 7 of the Trust Deed read with Rule 43. There exists no other provision. If the Rules intended for the General Body to remove all the Trustees, there would have been a specific provision, similar to Rule 41, which allowed for removal by the General Body. However, Rule 43 does not have any such wide sweeping power.

(k) Under Rule 43, which is the only Rule which provides for appointment of new Trustees, the appointment had to be at a Special General Body Meeting of the members of Khar Gymkhana. The appointment of new Trustees could never have been made by the General Body at the Annual General Body Meeting. It is no answer to state that the outcome may have been the same had it been at a Special General Meeting. If such a stand is accepted, it would mean that the provisions of the Trust Deed and the Rules which prescribe a specific procedure, and which have consciously chosen to provide for a Special General Meeting, are entirely meaningless, and can be ignored at the whims and fancies of the Managing Committee. When the law or Rules require a certain act to be done in a particular manner, it must be done in that manner and in no other.

SUBMISSIONS OF RESPONDENT NOS. 2 TO 11 AND 13 TO 29

4 These Respondents sought dismissal of the Appeal. In this regard, these Respondents submitted that the impugned Order dated 25th August, 2022 records submissions of the Appellants which, *inter alia*, are premised on the argument that the removal of the Appellants, Respondent No. 12 and Respondent No.34 as Trustees of the Khar Gymkhana and consequential appointment of Respondent Nos. 3, 24, 30 to 32 is illegal primarily on the grounds that all the Trustees removed on 19th December, 2021 were not named in the Requisition dated 1st November, 2021. These Respondents submitted that it was also the case of the Appellants that Clauses 4 and 7 of the Trust Deed have to be read together and that the Trust Deed does not contemplate a situation where the General Body can remove all 5 Trustees. It was also the case of the Appellants that the removal of the Trustees ought to have been at the Special General Body Meeting and not at the Annual General Meeting.

5 These Respondents submitted that the ex-Trustees devised a self-serving mechanism in order to retain control and secrecy in their operation/s qua the Khar Gymkhana, and if accepted as being legitimate, would never allow Trustees of the Khar Gymkhana to be removed. Further, these Respondents submitted that clauses of the Trust Deed ought to be given the plain, literal and grammatical meaning.

6 These Respondents submitted that, apart from exhaustively recording all submissions advanced by both the parties, the impugned Order returns findings as well as records reasons for its findings. The interpretation of the Trust Deed and the Rules, and the actions taken thereunder, being the core bone of contention between the parties, has been discussed and decided by the Learned Single Judge in the impugned Order. The Learned Single Judge eventually held that the members of the Khar Gymkhana have the power to remove all the Trustees by a Resolution passed at a General Meeting of the Khar Gymkhana. The impugned Order clearly records that the present Trustees have been validly appointed at the Annual General Meeting of the Khar Gymkhana held on 19th December, 2021 and that there is no violation of either the Trust Deed or the Rules, whilst removing the said Trustees. These Respondents submitted that the Learned Single Judge has, in the course of passing of the impugned Order, also reviewed the manner in which the Annual General Meeting of the Khar Gymkhana held on 19th December, 2021 was conducted and found that Agenda Item No.6, which pertained to the requisition signed by 180 members of the Khar Gymkhana, was thoroughly discussed and the Resolution was passed by an overwhelming majority.

7 Thus, these Respondents submitted that it is evident from a perusal of the impugned Order that the Learned Single Judge had exercised his discretion in a judicious manner. These Respondents, therefore, submitted that no interference is warranted in the present matter. In support of their submissions, these Respondents relied upon the decision of the Hon'ble Supreme Court in ***Wander Limited v/s. Antox India Private Limited*** reported in ***(1990) Supp SCC 727*** and also to the decision of this Court in ***World Crest Advisors LLP v/s. Catalyst Trusteeship Limited and Others*** reported in ***2022 SCC Online Bom 1409.***

8 These Respondents further submitted that the Requisition dated 1st November, 2021 was addressed by 180 members of the Khar Gymkhana. As per Rule 62 (i), a Special General Body Meeting may be convened at any time on a Requisition signed by 100 members who are eligible to vote. These Respondents submitted that, significantly, this Requisition has been addressed to the Office of the Trustees as well as Appellant Nos.1 and 2, Respondent No.34, Mr. Suresh Prabhu, Mr. Ashok Gowarikar and Mr. Bomi Mehta. The Requisition has been copied to the Managing Committee. These Respondents submitted that the Requisition is in fact the will of the members and was caused due to non-renewal of the lease for Khar Gymkhana, notice for payment of Rs.90 Crores, concealment of material information from members, Appellant No.1's claim to be a Managing Trustee and acting on

behalf of all the Trustees and lack of due diligence while appointing Trustees. These Respondents submitted that the Requisition clearly records that the members had completely lost confidence and faith in the Office of the Trustees of Khar Gymkhana as well as the Trustees.

9 These Respondents submitted that the Requisition also stated that the members understood that Khar Gymkhana's declaration of Trust allows the members to remove any Trustees by passing a Resolution by three-fourth majority and allows the members to fill the vacancy (if the number of Trustees fall below 3) by appointing new Trustees by passing a Resolution at the General Meeting.

10 These Respondents further submitted that the Annual General Meeting held on 19th December, 2021 had the largest voter turn out of 523 members. A statement of previous Annual General Meetings is annexed at page 163 – Volume 1 which demonstrates that 490 members of the Khar Gymkhana attended the Annual General Meeting of 22nd September, 2013.

11 These Respondents submitted that the Annual General Meeting was conducted on the basis of the Unamended Rules of Khar Gymkhana. The Notice of the Annual General Meeting was issued on 16th November, 2021 and was allowed to be held as per the Order dated 17th December, 2021. Agenda Items 6 and 7 recorded that the Meeting would consider the matter

requisitioned by 180 members pursuant to their letter dated 1st November, 2021, namely, the removal of all the Trustees, and, consequently, the appointment of new Trustees in their place and also provided for considering any Resolutions of the Managing Committee.

12 These Respondents submitted that the Appellants' arguments that Agenda Item 6 could not be raised at the said Meeting, and the same could only have been raised at a Special General Meeting, had been considered by the Learned Single Judge and a finding on the same had been returned at paragraph 80 at page 84 – Volume 1. These Respondents submitted that, this apart, the Appellants have, in the course of arguments, suggested that the reason behind such distinction qua Item 6 would be that the Agenda Item could be discussed with focus. These Respondents submitted that Agenda Item 6 was, in fact, discussed for over 40 minutes.

13 Further, these Respondents submitted that, after the passing of the Order dated 17th December, 2021 and after the Annual General Meeting was held, the Appellants attempted to modify the Order through a '*speaking to the minutes*' application on 23rd December, 2021. These Respondents submitted that the sole significance of this submission is that even after the Annual General Meeting results were declared and the Trustees were removed from the Office of the Trustees of Khar Gymkhana, an attempt was

made to record that the members are to vote on the removal of Trustees pursuant to the Requisition letter dated 1st November, 2021 - only to be able to further canvas the point in an argument that the ‘*named*’ Trustees could be the only Trustees who could have been removed at the Annual General Meeting of 19th December, 2021.

14 These Respondents further submitted that it is very evident that the members of Khar Gymkhana have acted in good faith and taken steps to remove the Trustees. The same does not in any manner fall foul of the settled principles in law. The Office of the Trustees has engaged the New Trustees since 19th December, 2021. The present Appeal was filed only on 10th October, 2022 and, thereafter, moved to condone the 16 days delay in filing the same in January, 2023. These Respondents submitted that it has been over two years since the Office of the Trustees is operating through the New Trustees. Apart from the fact that the entire premise of the Appellants’ submissions are fallacious and incorrect, irreparable harm would be caused by setting aside the impugned Order. These Respondents submitted that the balance of convenience continues to lie in favour of the Respondents and against these Appellants.

ANALYSIS AND FINDINGS

15 Before we embark upon the journey to examine whether the order of the learned Single Judge requires interference, especially since the present Appeal arises from the dismissal of the Interim Application, it would be apposite to understand our powers to interfere with an Order of a learned Single Judge who has exercised his discretion in a particular manner. In this regard, the Hon'ble Supreme Court in the case of ***Wander Ltd. (supra)*** has laid down when the Appellate Court ought to interfere with the discretion exercised by the learned Single Judge. In paragraph 14 of ***Wander Ltd. (supra)***, the Hon'ble Supreme Court has held as under:-

“14:- The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court

reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles *Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph: (SCR 721)*

"... These principles are well established, but as has been observed by Viscount Simon in Charles Osenton & Co. v. Jhanaton

'...the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case'."

The appellate judgment does not seem to defer to this principle."

(emphasis supplied)

16 Further, in paragraph 6 of the Judgement of this Court in *World Crest Advisors LLP (supra)*, this Court has held as under:-

*"6:- We have noted this at the forefront for two reasons. First, we believe the principle enunciated in these two cases constrains to a considerable extent, although perhaps not entirely, the extent of our ability to interfere with an impugned order such as this one. Should we find that the impugned order is a plausible view, one that is not arbitrary, capricious or, in the legal understanding of the term, 'perverse', then in appeal we should not - indeed cannot - interfere. In those circumstances, we cannot substitute an alternative view or order for that of the learned Single Judge. The second aspect affects the Plaintiff in appeal before us, represented by Mr. Seervai. Before the learned Single Judge, he would undoubtedly have had to show that all three well-established ingredients or components for ad-interim relief were met a strong *prima facie* case, that the*

*balance of convenience favours the Plaintiff, and demonstrating irretrievable prejudice if relief was denied. Once that discretion was exercised at the ad-interim stage by the learned single Judge, in appeal, the burden on Mr. Seervai is much heavier following the Wander v. Antox principle. For Mr. Seervai must now show that, despite that long-understanding principle of law, we must exercise our discretion and must grant the ad-interim relief refused by the learned Single Judge. This requires Mr. Seervai to now make out an overwhelming *prima facie* case. It is not enough for him to merely demonstrate that a view and conclusion different from that of the learned Single Judge is possible, but to show that the relief he seeks is the only possible view, that the impugned order is not even remotely plausible, and therefore the learned single Judge fell into error. As we shall presently see, and for the reasons that follow, despite a day-long hearing, we are not persuaded at the end of all this that the Plaintiff has succeeded in discharging this obligation.”*

(emphasis supplied)

17 In our view, since the present Appeal is from an Order passed in an Interim Application, the principles laid down by the aforesaid Judgements would apply. In this context, the test would be whether the exercise of discretion by the first Court has been shown to have been exercised arbitrarily or capriciously or perversely or whether the first Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. It is only in these circumstances that the Appellate Court would interfere with the exercise of discretion. The Appellate Court will not re-assess the material and seek to reach a conclusion different from the one reached by the Court below, if one reached by that Court was reasonably

possible on the material. The Appellate Court would normally not be justified in interfering with the exercise of discretion under Appeal solely on the ground that if it had to consider the material at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicious manner, the fact that the Appellate Court would have taken a different view, would not justify interference with the Trial Court's exercise of discretion.

18 Keeping in mind these principles laid down not only by the Hon'ble Supreme Court, but also this Court, we will have to consider the arguments of the Appellants in the present Appeal.

19 The first argument of the Appellants is that the Requisition notice dated 1st November, 2021 was addressed to five named Trustees, and therefore, removal could only have been of the said five Trustees in respect of whom the Requisition notice was issued, and for whose removal, the Meeting was called for on 19th December, 2021. The Appellants submitted that these arguments were specifically raised and recorded, *inter alia*, in paragraph 36 of the impugned Order, but have not been dealt with by the Learned Single Judge, save and except to say that as Item 6 of the Agenda dated 16th November, 2021 allowed for removal of all Trustees, the Trustees existing on the date of the Meeting could all be removed. The Appellants

submitted that this finding entirely misses the point as the said Agenda item was also in the context of those named Trustees for whom the Requisition notice had been issued, and, therefore at the highest, the reference to all Trustees could only have been a reference to the five named Trustees who were Trustees to whom the Requisition notice was addressed, and in respect of whom the General Body notice was issued on 16th November, 2021. The Appellants submitted that the three new Trustees were neither given any notice of the intent to remove them, nor were they given any opportunity to be heard nor to make a representation prior to their removal, nor were any members of the General Body put to notice that these three persons were also to be removed.

20 We find that in paragraphs 81 to 84 of the impugned Order, the Learned Single Judge has dealt with these arguments. Paragraphs 81 to 84 read as under:-

“81. It is necessary to note that reliance has been placed by Mr. Vashi on the Resolution proposed in the Notice setting out the Agenda of the said Requisitioned Meeting which had been issued on 16th November, 2021. The Resolution therein had named the erstwhile Co-Trustees which included Suresh Prabhu and Bomi Mehta. However, it is necessary to note Agenda Item No.6 which reads as under:-

6. To consider the matter requisitioned by 180 members pursuant to their letter dated 1st November, 2021, namely, the removal of all Co-

Trustees, and consequently, the appointment of new Co-Trustees in their place.

82. *The Agenda Item No.6 clearly envisaged the removal of all Co-Trustees and appointment of new Co-Trustees in their place. At the said Meeting held on 19th December, 2021, there were 523 members present. Item Nos.1 to 4 of the Agenda were read out and the members of the Gymkhana spoke on these resolutions and thereafter the resolutions were passed. Resolution No.1 was for confirming the minutes of the Meeting held on 15th August, 2021 which was unanimously passed. It is further necessary to note that Agenda item No.5 had not been read out before reading out Agenda Item No.6 and upon realizing this, Defendant No.5 read out Agenda item No.5 which pertained to routine business of appointing auditors and fixing their remuneration which was passed. Agenda Item No.6 which has been extracted above was thereafter read out and the President of Khar Gymkhana invited the first signatory to the Resolution to speak and thereafter various members of the Khar Gymkhana including Plaintiff No.4 addressed the members.*

83. *I have had the opportunity of viewing the video recording of the proceedings at the said Meeting held on 19th December, 2021. It does appear that the Agenda Item No.6 was thoroughly discussed and during the discussion there had been some disruptions at the said Meeting by certain persons, who were present and who are stated by Mr. Seervai to be the Plaintiff's relatives/friends including Defendant No.12 and Plaintiff No.6. It is relevant to note that prior to voting it appears that the Plaintiff No.6 had approached the dais and claimed that the Agenda Item No.6 is different from the proposed Resolution and stated that all the then Trustees have been named in the Resolution including 3 of them who have thereafter resigned. There was some confusion and accordingly the President of the Khar Gymkhana put the resolution to vote and asked the members who are against the resolution for removal of the five Trustees to raise their hands. A count was first taken of the members against the Resolution for removal of the five Trustees and approximately 30 Members were against the resolution. Then the President of the Gymkhana asked the members who are in favour of the removal of all Co-Trustees*

to raise their hands. A count was taken and there was overwhelming majority and the President accordingly announced that the Resolution had been passed by more than 75% majority. Subsequently the Defendant No.5 suggested the names of five new Trustees and called a show of hands for their appointment. This was also passed by overwhelming majority.

84. *There is some controversy regarding the proposed Resolution for removal of named Co-Trustees and / or whether it was considered. Agenda Item No.7 was to consider any Resolution of the Managing Committee. When it was taken up; Defendant No.5 informed the members of the Khar Gymkhana that the Resolution for removal of all Co-Trustees and appointment of new Co-Trustees in their place had already been passed and that the Resolution is as per the Requisition of the members, passed in terms of Agenda Item No.6. This is apparent from the minutes of the said Meeting which recorded that "... this resolution has been dealt with. The actual Requisition was for removal of all Co-Trustees and it has also been decided by that house. We are not taking this up. The exact resolution is of which we have gone by the Requisition of members" In any event, it is well settled that there is limited scope for judicial scrutiny, interference and intervention in the internal workings of a club qua its members. Thus, this Court is not delving into this controversy at the said Meeting held on 19th December, 2021 and/or the factors which weighed with the members of the Khar Gymkhana in their removal of all the Co-Trustees and appointment of new Co-Trustees in their place. Suffice it to say that by the Requisition signed by the 180 members of the Khar Gymkhana grievance was expressed against the existing Co-Trustees which include issues such as non renewal of lease, Notice of payment over Rs.90 Crores, concealment of material information from members. Plaintiff No.3 claiming to be acting as "Managing Committee" and acting on behalf of all Trustees and lack of due diligence while appointment of the Trustees. The Requisition shows total lack of confidence and faith in the erstwhile Trustees of Khar Gymkhana. Thus, their removal was Requisitioned and accordingly in my prima facie view validly passed at the said Meeting held on 19th December, 2021."*

21 We are not inclined to interfere with these findings of the Learned Single Judge. The Learned Single Judge has exercised his discretion in a manner which is not arbitrary, or capricious or perverse. The Learned Single Judge has not ignored the settled principles of law regarding grant or refusal of interim injunctions. Therefore, on the basis of the principles laid down by the Hon'ble Supreme Court in **Wander Ltd. (supra)**, we are not inclined to interfere with the said findings of the Learned Single Judge.

22 Further, the Requisition dated 1st November, 2021 was addressed to the Office of the Trustees. The said Requisition states that the members have completely lost their confidence and faith in the Office of the Trustees of Khar Gymkhana as well as the co-Trustees and, on that basis, have sought the removal of Trustees and appointment of new Trustees in their place. Thus, the Requisition was for removal of all Trustees and appointment of new Trustees in their place.

23 Further, Agenda Item No. 6 reads as under:-

“6. To consider the matter requisitioned by 180 members pursuant to their letter dated 1st November, 2021, namely, the removal of all Co-Trustees, and consequently, the appointment of new Co-Trustees in their place.”

24 Thus, it is clear from Agenda Item No.6 that what was sought was removal all Trustees, and, consequently, the appointment of new Trustees in their place.

25 Further, the findings of the Learned Single Judge in paragraph 83 of the impugned Order show that the Learned Single Judge had an opportunity of viewing the video recording of the proceedings at the said Meeting held on 19th December, 2021, and the same showed that knowing full well that all the Trustees were sought to be removed, 30 members voted against the resolution, and an overwhelming majority out of the 523 members present, voted in favour of the Resolution for removal of the Trustees. Hence, the removal of all Trustees was not in contravention of the principles of natural justice.

26 The second argument of the Appellants is that the Requisitioned Meeting was called for under Rule 62 of the Rules. The Appellants submitted that even the Respondents had accepted and admitted that the Meeting was called for under Rule 62. The Appellants submitted that Rule 62 specifically contemplates that the requisitioned Meeting such as the present one would be by way of a Special General Body Meeting. The Special General Body Meeting has particular facets, including the manner in which voting is done, and, in particular, the fact that, at that Meeting, there is a focused discussion

only on the matters set out in the requisition and for which the Meeting is called. The Appellants submitted that, in the present case, what was held was not a Special General Body Meeting but the purported 89th Annual General Body Meeting. The Appellants also submitted that there was no need to hold an Annual General Body Meeting merely four months after the previous Annual General Body Meeting which was held on 15th August, 2021.

27 Further, the Appellants submitted that if the Rules require a particular procedure to be followed, then that procedure must be followed or else the action taken at the Meeting is vitiated and ought to be set aside.

28 The Appellants submitted that this argument was specifically recorded and raised in paragraphs 37 and 43 of the impugned Order but has not been dealt with by the Learned Single Judge.

29 Rule 62 of the Rules does provide that a Special General Body Meeting may be convened at any time on the orders of the President or on a resolution of the Managing Committee or on a Requisition signed by 100 members eligible to vote.

Rule 62 reads as under:-

“ Rule 62 (i) A Special General Body Meeting may be convened at any time on the orders of the President or on a resolution of the Managing Committee or on a requisition signed by 100 members eligible to vote.

(ii) Such a requisition shall state the object of the Meeting proposed to be called and shall be deposited with the Hon. General Secretaries.”

30 However, Clause 4 of the Trust Deed also provides for removal of Trustees by a Resolution passed at the General Body Meeting of the Khar Gymkhana by a three-fourth majority of votes, and reads as under:-

“ The Trustees shall hold office for life or until resignation or unless removed from office by a Resolution passed by the Khar Gymkhana at a General Meeting of the Gymkhana by a three fourths majority of votes.”

31 Therefore, as per the provisions of Clause 4, the Trustees can be removed by a Resolution passed by the Khar Gymkhana at a General Body Meeting of the Khar Gymkhana by a three-fourth majority of votes.

32 Even if we accept that the Resolution Notice dated 1st November, 2021 was issued pursuant to Rule 62 of the Rules, Clause 4 of the Trust Deed is very clear and provides for removal of the Trustees by a Resolution passed by the Khar Gymkhana at the General Body Meeting of the Khar Gymkhana by a three-fourth majority of votes. In the present case, the Resolution for removal of Trustees is as per Clause 4 of the Trust Deed, and therefore, cannot be termed as “*illegal*”. It is perfectly valid and legal. In the

present case, it cannot be said that the members of Khar Gymkhana have not acted in good faith.

33 Further, as submitted by the Respondents, the Agenda Item 6, for removal of Trustees, was discussed for 40 minutes, and after that a decision was taken to remove the Trustees and appoint new Trustees. Thus, it can be seen that the members of the Khar Gymkhana had not only followed the principles of natural justice but also acted in a good faith.

34 For these reasons, we are unable to accept the arguments of the Appellants based on Rule 62 of the Rules.

35 The third argument of the Appellants was regarding the appointment of new Trustees. The Appellants submitted that the newly appointed Trustees were not even named in the Agenda Notice in the Meeting held on 16th November, 2021. The said notice contemplated the purported removal of all five Trustees and the bare minimum that was expected was that the proposed new Trustees would be named. The Appellant submitted that this is not merely a formality but a right of the members to know who is to be selected as the Trustees, which right was simply taken away by arbitrarily putting up the names of the new Trustees at the Meeting itself and pushing through their appointments.

36 Further, in this regard, the Appellants submitted that Clause 7 of the Trust Deed specifies that the General Body Meeting can only appoint the Trustees if the Trustees have not themselves filled the vacancies within three months or if the number of Trustees dwindles to below two. The Appellants submitted that, at no point of time, had the number of Trustees ever dwindled to below two, and, therefore, there was no occasion for the General Body to appoint any new Trustees. The Appellant submitted that this argument having been raised and recorded in paragraph 35 of the impugned Order, had been dealt with by the Learned Single Judge in paragraph 79, only to hold that Clause 7 will not apply to the appointment of new Trustees if all the old Trustees are removed. The Appellants submitted that there is no conceivable reason as to why clause 7 would not apply to allow for the Trustees to appoint new Trustees even in a situation where a Trustee has been removed.

37 The Appellants further submitted that it is entirely conceivable that, in a given situation, only one or two Trustees may be removed by the General Body, and if the logic applied by the Learned Single Judge is accepted, then in the event of such a removal only the General Body would be entitled to appoint the new Trustees. The Appellants submitted that there is no warrant for this interpretation of Clause 7.

38 Further, the Appellants submitted that it was never contemplated by the Trust Deed or the Constitution that any such mala fide action would be taken causing all the Trustees to be removed. The power of the General Body to appoint Trustees was only to be exercised in a situation where, some unfortunate events, such as the death of two or three Trustees in quick succession, resulted in the number dwindling to below two, and was never to be misused to cause removal of all Trustees and to simply reinstate the entire board of Trustees with new Trustees who were obviously favourable for the then Managing Committee.

39 The Appellants submitted that the learned Single Judge has failed to appreciate that the only power for appointment under the Rules was under Clause 7 read with Rule 43. If the Rules intended for the General Body to remove all Trustees and to appoint all new Trustees, there would have been a specific provision similar to Rule 41, which allowed for removal by the General Body. However, Rule 43 does not have any such wide sweeping power.

40 The Appellants further submitted that under Rule 43, which is the only Rule which provides for appointment of new Trustees, the appointment had to be at a Special General Body Meeting of the members of

Khar Gymkhana. The Appellant submitted that, admittedly, in the present case, what was held was an Annual General Body Meeting. The appointment of new Trustees could never have been made by the General Body at an Annual General Meeting. The Appellants reiterated that when the law or rules require certain acts to be done in a particular manner, it must be done in that manner and in no other.

41 As regards the issue of appointment of new Trustees, the learned Single Judge has given his findings in paragraphs 79 and 80 of the impugned Order, which read as under:-

“79:-Clause 7 of the Trust Deed and Rule 43 cannot be conflated with Clause 4 and Rule 41(f) as in my prima facie view neither concern themselves with the removal of the Trustee which is clearly provided for in Clause 4 and Rule 41(f). Clause 7 of the Trust Deed and Rule 43 of the said Rules both provide for any vacancies amongst Trustees arising by death, resignation, insolvency or any other disability or cause shall be filled up by continuing or surviving Trustees provided the number of surviving Trustees have not dwindled down to two or less. This, in my prima facie view, cannot be read to include the word removal of a Trustee. Such interpretation of Clause 7 by Mr. Vashi is in my prima facie view on a misreading and misinterpretation of the said Clause 7 as well as the said Rule. There is no merit in the argument on behalf of the Plaintiffs that the Clauses 4 and 7 of the Trust Deed are one and the same as they relate to removal of the Trustees. The words "or cause" which has been interpreted by Mr. Vashi to include removal is an incorrect reading of this clause as removal is expressly dealt with in Clause 4 and would result in clause 4 being rendered nugatory. It is evident that the words in Clause 7 are required to be read ejusdem generis

and grants the power to appoint Trustees by the Gymkhana as there can never be a scenario where there is a complete void i.e. no Trustees due to their removal. The Trust Deed itself does not provide for its dissolution. In my prima facie view by the removal of all Co-Trustees at the said Meeting held on 19th December, 2021, by the 3/4th of the members present at that Meeting, there could not have been a vacuum and hence the new Co-Trustees were appointed on the same date under Rule 62 of the said Rules which is in terms of the Trust Deed and said Rules. In this context it would be necessary to reproduce Rules 62 and 63 which read thus:-

"62 (1) A Special General Body Meeting may be convened at any time on the orders of the President or on a resolution of the Managing Committee or on a requisition signed by 100 members eligible to vote.

(ii) Such a requisition shall state the object of the Meeting proposed to be called and shall be deposited with the Hon. General Secretaries.

63: On receipt of the requisition under Rule 62, the Managing Committee shall convene a Special General Body Meeting. If the Managing Committee does not convene the Special General Body Meeting within 21 days from the date of the requisition being deposited, the requisitionists or any 12 of them may themselves convene the Special General Body Meeting by giving notice to the members and displaying it on the Notice Board of the Gymkhana.

80. Rule 62 provides for Requisition of Special Body General Meeting by 100 members who are eligible to vote. As per Rule 41(f) the members have the power to remove a Trustee or all Trustees at such Meeting and in view of my finding that there cannot be a vacuum and / or no Trustees due to their removal, the new Co-Trustees have been validly appointed on the same day at the said Meeting Requisition

by the members under Rule 62 of the said Rules. Thus in my prima facie view, there is no violation of either the Trust Deed or the Rules in the removal of the Co-Trustees and appointment of new Co-Trustees.”

42 A perusal of the findings of the Learned Single Judge in paragraphs 79 and 80 shows that the Learned Single Judge has exercised his discretion, which is not arbitrary or capriciously or perverse. As stated earlier, relying upon the Judgement of the Hon’ble Supreme Court in **Wander Limited (supra)**, the Appellate Court will not re-assess the material and seek to reach a conclusion different from the one reached by the learned Single Judge, if the one reached by the Learned Single Judge is reasonably possible. We would not be justified in interfering with the exercise of discretion by the Learned Single Judge solely on the ground that, if we had considered the material at the trial stage, we would have come to a contrary conclusion. Since discretion has been exercised by the Learned Single Judge reasonably and in a judicial manner, the fact that the Appellate Court could have taken a different view, would not justify interference with the Trial Court’s exercise of discretion. For these reasons, we were unable to accept the arguments of the Appellant regarding the new Trustees.

43 For all the aforesaid reasons, the following Order is passed:-

- (i) Appeal is dismissed;
- (ii) There shall be no order as to costs.

44 This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by fax
or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]