

**In the Supreme Court of Bangladesh  
High Court Division  
(Statutory Original Jurisdiction)**

**Present:**

**Mr. Justice Sikder Mahmudur Razi**

Company Matter No. 244 of 2021

IN THE MATTER OF:

An application under Section 43 of the  
Companies Act, 1994.

-AND-

IN THE MATTER OF:

Farzeen Chowdhury

..... Petitioner

- V E R S U S -

Chattogram Club Limited and others.

..... Respondents

Mr. Md. Yousuf Ali with

Mr. Md. Uzzal Hossain with

Mr. Tonoy Kumer Saha with

Mr. Gobinda Biswas, Advocates

..... For the Petitioner.

Mr. M.A Hannan, Senior Advocate with

Mr. Mohammad Tafsirul Islam, Advocate

..... For the Respondent No.1.

**Heard on: 08.07.2025 and 22.07.2025**

**Judgment on: 24.07.2025**

**Sikder Mahmudur Razi, J:**

1. By filing this application under section 43 of the Companies Act, 1994, the petitioner prayed for a direction upon the respondent No.1 to induct the name of the petitioner as member in the register of members of the respondent No.1-club.

2. The case of the petitioner is that petitioner's father late Wahed Asgar Chowdhury was permanent member of Chittagong Club Ltd. having code No. C-88. The mother of the petitioner died while her father was still alive. Father of the petitioner died on 11.04.2012 leaving behind the petitioner and her two brothers namely, Ahmed Faisal

Chowdhury and Ahmed Russel Chowdhury as his heirs and they are the only legitimate heirs of late Wahed Asgar Chowdhury. Subsequently, Ahmed Faisal Chowdhury obtained permanent membership in the club on 15.10.2012 and Ahmed Russel Chowdhury obtained permanent membership in the club on 09.12.2013. Now, as third child of their father the petitioner is also entitled to get membership in the respondent No.1 club and with this end in view, on her behalf her brothers applied for permanent membership to the respondent No. 1 club on 09.03.2016, 19.10.2020 and 17.08.2021 which were duly received by the club. As the respondent No. 1 club set idle over the matter for a long period of time the eldest brother of petitioner filed an application to the club requesting for an update on the matter. In response to the said letter, the Secretary of the respondent No.1 club by a letter dated 12.10.2021 informed that Mr. Wahed Asgar Chowdhury during his life time made his choice and exercised his right in accordance with and authorized by Article 1(c) of the Articles of Associations of the club and thereby refused to enter the name of the petitioner as member of the club. This reply of the Secretary of the club made the petitioner very demotivated and she contacted few of her relatives and well-wishers who are members of the respondent No. 1 club and came to know that respondent No.1 club is conspiring to award membership to the respondent No.2 without any legal basis. As the respondent No.2 in connivance with respondent No.1 has been hatching up the conspiracy to deprive the petitioner from being member of the club which is her legal entitlement, therefore, she has filed the instant company matter. During hearing of the matter, the petitioner by

filing a supplementary affidavit stated that respondent no. 2 born on 26.06.1996 whereas the mother of the said respondent in her discharge application which was filed on 01.07.1998 in Nari-O-Shishur Nirjaton Case No. 89 of 1998 categorically stated that she had no marital relationship with Wahed Asgar Chowdhury i.e. the father of the petitioner.

3. Only Respondent No.1 Chittagong Club Ltd., contested the matter. By filling affidavit-in-opposition the club stated that Mr. Wahed Asgar Chowdhury died leaving behind two wives, three sons and two daughters as his legal heirs. The heirs certificate dated 19.03.2013 which was submitted to the respondent club by Ahmed Faisal Chowdhury was not correct as the same did not reflect about the existence of the second wife and two children of late Wahed Asgar Chowdhury. The heirs certificate dated 19.04.2012 which is kept with the record is the correct one. It has been further stated by the respondent No.1 that late Wahed Asgar Chowdhury during his life time exercised his right under Article 1 (c) of the Articles of the Association of the club and following the said provision two brothers of the petitioner has already been made permanent member of the club. As the petitioner's name was not recommended by her father during his life time, therefore, there was no scope to accept her membership by the club. It has further been stated that since Mr. Wahed Asgar Chowdhury during his life time introduced Samina Wahed Chowdhury i.e. respondent No.2 as his daughter to avail the privileges of the club facilitates therefore, the club inducted said

Samina Chowdhury i.e. respondent No.2 as an associate member. Before accepting respondent No. 2 as associate member the club in its 14<sup>th</sup> meeting of the general committee which was held on 12.07.2021 decided to take legal opinion and accordingly, sought opinion from their legal advisor Advocate Syed Qudrat Ali. The learned advocate opined that Samina Wahed Chowdhury is entitled to get the membership as per provision of Article 1 (c) of the club Constitution in line with documents submitted by her deceased father Wahed Asgar Chowdhury. Based on the said opinion the respondent No.1 in its 29<sup>th</sup> meeting of the general committee which was held on 06.12.2021 decided to grant associate membership in favour of respondent No.2 and accordingly, respondent No.1 issued a letter on 27.12.2021 to the mother of the respondent No.2 informing approval of associate membership and subsequently, issued another letter dated 03.01.2022 to the respondent No.2 granting associate membership.

4. Mr. Yousuf Ali, learned advocate for the petitioner submitted that respondent no. 2 is the daughter of Mrs. Shamima Akter who is the married wife of one Md. Nuruddin and therefore, respondent no. 2 is not an heir of late Wahed Asgar Chowdhury. He further added that the management of the club in connivance with respondent no. 2 and her mother has been hatching up the conspiracy to deprive the petitioner from the membership of the club.

4.1. He next submitted that the petitioner as the 3<sup>rd</sup> child of late Wahed Asgar Chowdhury is entitled to get her name entered into the register of the respondent no. 1 club under the purview of Article 1(c) of the

Articles of Association of the club and accordingly applications were submitted for entering the name of the petitioner as member of the club but the respondent no. 1 most illegally rejected such application without any lawful ground.

4.2. Mr. Yousuf further submitted that using club or introduction by the parents to the club for usages is not the eligibility criteria for a permanent membership rather it is merely some formalities for an associate membership which has been categorically spelt out in Article 1(A) of the Articles of Association. The objective of inducting the children of a permanent member of the club as Associate Member under Article 1(A) is only to make them eligible for using the club facilities.

4.3. Mr. Yousuf further submitted that as the mother of the respondent no. 2 herself in her discharge application in a criminal case stated that she had no marital relationship with Wahed Asgar Chowdhury, therefore, there is no scope to accept respondent no. 2 even as associate member of the club.

4.4 Mr. Yousuf finally submitted that from Annexure-7 and 10 of the affidavit-in-opposition filed by the club it is evident that respondent No.2 and the club in connivance with each other and by creating fraudulent documents obtained associate membership in the club and also deprived the petitioner from her legal entitlement. By referring a decision of the Hon'ble Appellate Division in the case of BMDC -vs- Shah Md. Arman, reported in 76 DLR (AD) page 104 the learned advocate submitted that a person who by manipulation of a process frustrates the legal rights of others should not be permitted to take

advantage of his/her wrong or manipulations. With these submissions the learned advocate prayed to allow the instant company matter.

5. Per contra, Mr. M A Hannan learned senior advocate appearing for the respondent no. 1-club submitted that the instant company matter is not maintainable because it is not the case of the petitioner that the name of respondent no. 2 is without sufficient cause has been entered in the register of members of the club. It is also not the case of the petitioner that default is made or unnecessary delay takes place in entering on the register the name of the petitioner. He next submitted that the petitioner is not an aggrieved person as because she never applied for club membership rather the application was filed through her brothers and she never used the club facility as children and obtained associate membership of the club and therefore, there is no scope to grant permanent membership in her favour. He next submitted that late Wahed Asgar Chowdhury applied for associate membership of respondent no. 2 during his life time and based on his prayer and wish as well as documents submitted by him, the club granted associate membership to respondent No.2. By referring a decision of the Hon'ble Appellate Division in the case of Afruz Miah (Md) and another -vs- Al-haj Md. Siraj Miah being dead his legal heirs Karimunnessa and others as reported in 43 DLR (AD) page 89 Mr. Hannan finally submitted that since highly disputed question of fact regarding validity of marital relation between late Wahed Asgar Chowdhury and Shamima Akter is involved in this company matter, therefore, this court should not interfere into this matter.

In reply to this submission Mr. Yousuf Ali, learned advocate for the petitioner submitted that this company matter can be resolved based on materials on record even without touching the question of legality of the alleged marital relation between late Wahed Asgar Chowdhury and Shamima Akter.

6. Upon hearing the learned advocates of the respective parties and on perusal of the materials on record it appears to this court that disposal of the instant matter requires determination of 3 questions/issues and those are:

- (i) Whether the instant company matter is maintainable or not?
- (ii) Whether granting of “Associate membership” to respondent no. 2 is proper or not?
- (iii) Whether the petitioner is entitled to be declared as the rightful claimant of membership in respondent no. 1-club as the heirs of her deceased father namely Wahed Asgar Chowdhury?

7. As to the 1<sup>st</sup> question/issue i.e. maintainability of the instant matter it was the submission of the learned advocate for the respondent No.1-club that this court has no jurisdiction to order a company to give membership that it has refused as per the provision of Articles of Association and bye-laws. As per the submissions of the learned advocate for the respondent no. 1 the Court may order a rectification of the share register if the name of any person is without sufficient cause entered in or omitted from the register of memberships of a company or neglect is made or unnecessary delay takes place in entering names of

any person as becoming member or ceased to be a member of the company and since in the present case no alteration has taken place in the register of members of respondent no. 1 -club which could give rise to any cause of action under section 43. In reply of such submission, Mr. Yousuf Ali learned advocate for the petitioner submitted that the petitioner's right to be a member of the club has arisen by way of transmission/inheritance of the membership of her father after his death. Therefore, refusal to enter her name as member of the club has given rise of a solid cause of action to invoke the jurisdiction of the court under section 43 of the Companies Act.

7.1 For determination of this issue, it will be profitable to quote Section 43 of the Companies Act, 1994 as well as some of the provisions of the Articles of Association of the respondent No.1-club. Section 43 of the Act, 1994 runs as follows:

**Section 43. Power of Court to rectify register: If-**

- (a) the name of any person is without sufficient cause entered in or omitted from the register of members of a company; or
  - (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having become, or ceased to be, a member,
- the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.



(2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved and may also make such order as costs as it may consider proper.

(3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand and generally may decide any question necessary or expedient to be decided for rectification of the register and may also decide any issue involving any question of law."

Article 1 (c), (e) and 1(A) of the Articles of Association of the club runs as follows:

**Article 1(c).** A Permanent Member who has been a member for at least 10 (Ten) years shall have the rights and privileges to make 3 (Three) of his/her children Members, subject to their meeting all requirements as stated in the relevant Articles and Bye Laws and acceptance by the General Committee. Following induction of his/her 3 (Three) children, the Permanent Member loses his/her right to transfer his/her membership. In the event that a Member and his spouse too are no more, the first 3 (Three) of their children to apply to the Club for

Membership will be eligible to continue using the club having obtained a written permission from the General Committee under a condition that they make another Permanent Member of the club their guardian who shall be responsible for their demeanor and payment of bills etc. At age 21, they will be eligible to apply for Associate Membership and thereafter Permanent Membership meeting all requirements as stated under Article 1 (A) and other such relevant Articles.

**Article 1(e).**In the case of a member who has legally inherited the Membership from his/her deceased spouse, hereafter termed 'Successor Member', he/she may continue using the Club. When a period of 10 (Ten) years has passed from the date of his/her deceased spouse becoming a Permanent Member, the Successor Member shall have the right and privilege, having met all requirements as stated in Article 1 (a), Article 1(c) and other such relevant Articles, to make 3 (Three) of his/her children Permanent Members. He/she is not eligible to transfer his/her membership unless he/she has attained 20 (Twenty) years of Membership from the date of his/her spouse's enrolment as a member. If he/she or his/her deceased spouse have already made 3 (Three) of his/her children Members, he/she loses the right to transfer his/her Membership. If he/she has remarried, he/she loses the right to continue his/her Membership and shall not be eligible to make his/her children Members nor will he/she ever be eligible to transfer his/her Membership.

**Article 1(A).**Sons and daughters of Permanent Members between the ages of 21 and 27 years are eligible to use all club facilities. They are not permitted to use any credit facilities. They can make payments either

in cash or through cash card. Upon production of a letter from their parents to the effect that their parents will be responsible for settlement of their bills, they may use credit facilities. Their parents shall also be responsible for their demeanour and compensate for any damage done to the Club's properties. Following the General Committee's acceptance of his/her application, he/she will be termed as Associate Member. Such Associate Member (1) shall have no voting right (2) is not allowed to introduce any guests and (3) shall not be allowed to use the Bar. A monthly subscription of TK 500.00 (Five Hundred) will be payable by each such Associate Member. At age 28, he/she may apply for Permanent Membership.

7.2 Therefore, it appears that membership of a permanent member goes in the hand of others in the following manner:

- (a) In favour of maximum 3 (three) children by way of induction;
- (b) In favour of 1<sup>st</sup> three children by way of transmission/inheritance on the death of a permanent member when there is no earlier induction;
- (c) In favour of spouse as “successor member” subject to certain conditions;
- (d) By way of transfer in favour of any other person.

As such, any one from the above 4 (four) categories of person may approach the Court when he/she felt aggrieved because of (i) non-inclusion of his/her name or (ii) refusal to include his/her name as member despite having all other requisite qualifications or (iii) inclusion

of any heir without sufficient cause depriving the heir who is legally entitled.

Here, in the instant matter, it is the case of the petitioner that it is she whose name ought to be entered in the register of the member of the respondent No.1-club. But the club without granting membership to the petitioner granted membership in favour of the respondent number 2 which is illegal and improper. Therefore, this court holds that the instant company matter is maintainable.

8. The 2<sup>nd</sup> and 3<sup>rd</sup> issue/question as to whether granting of “Associate membership” to respondent no. 2 is proper or not and as to whether the petitioner is entitled to be declared as the rightful claimant of membership in respondent no. 1-club as the heirs of her deceased father namely Wahed Asgar Chowdhury are so inextricably linked that finding answer to one question will solve the other.

8.1 Before expressing my findings and decisions on these two issues it will be useful to recapitulate the submissions of the learned advocates of the respective parties.

8.2 The quintessence of the submissions of the learned advocate for the petitioner is as follows:

- The petitioner as the 3<sup>rd</sup> eldest child of late Wahed Asgar Chowdhury is entitled to get membership of the club since her father during his lifetime did not exercise the right and privilege to induct 3 children as member to its full extent.
- The parentage of respondent no. 2 is still unresolved. Even if at the end of the day it is found that respondent no. 2 is

the legitimate daughter of late Wahed Asgar Chowdhury nevertheless, she will not be entitled to get the membership of the club since she is not the 3<sup>rd</sup> eldest child.

- The plea of the club that respondent no. 2 was introduced as member by late Wahed Asgar Chowdhury during his life time cannot stand, as because the document relied upon by the club in this regard which has also been annexed with their affidavit-in-opposition is not valid and proper document in the eye of law rather those contained false information of the children of the member. Since, fraud vitiates everything; therefore, the “associate membership” given to respondent no. 2 is also liable to be declared illegal.

8.3 On the other hand, the summary of submissions of the learned advocate for the respondent no. 1-club on these issues are as follows;

- Late Wahed Asgar Chowdhury applied for associate membership of respondent no. 2 during his life time and based on his prayer and wish as well as documents submitted by him, the club granted associate membership to respondent No.2.
- Club is guided by its Articles of Association and Bye-laws and the club granted associate membership to respondent no. 2 following the applicable rules.

8.4 Now, let me test the submissions of the learned advocates of the respective parties in the light of the relevant provisions in this regard i.e. in the light of Article 1 (c), (e), 1(A) and 17 of the Articles of Association and Rule 90, 90(a), 91(b) of the Bye-laws of the club. Since, Article 1 (c), (e) and 1(A) of the Articles of Association has already been quoted earlier therefore, only Article 17 and Rule 90, 90a, 91 (b) of the Bye-laws are now reproduced below:

**Article 17:** A spouse of a deceased Permanent Member of the Club as well as his/her children may continue to use the facilities of the club. The Club Secretariat will communicate with the spouse to complete the Membership (Successor Membership) formalities within 2(Two) years of the demise of his/her spouse. Membership may be granted subject to approval of the General Committee and on payment of monthly subscription and club dues as applicable in the case of a Permanent Member. Successor Members shall, however, have no voting rights.

### **Bye-Laws**

**Rule 90. Successor Membership.** In the case of a member who has legally inherited the Membership from his/her deceased spouse hereafter termed 'Successor Member', he/she may continue using the club.

**a. Eligibility.** - Legal spouse of the Deceased Permanent Member. Whose name has been endorsed to the official document of the club by the concern Member himself while he was alive.

**91b. Application for Associate Membership.** A Member shall apply for his/her Son/Daughter for Membership of the Club, if Father is not alive then Mother/Legal Guardian shall apply in a plain paper (forwarding letter) to the Secretary for Associate Membership under category along with following documents:

- i. CV of the Candidate narrating all details.
- ii. Two copies of recent passport size colored photo.
- iii. Birth Certificate/National ID/Passport copy.
- iv. Father's declaration (regarding children details)

8.5 On going through those provisions, it appears to this court that;

- (I) A permanent member who has been a member for at least 10 years shall have the right and privilege to make 3 (three) of his/her children of his/her choice members of the club subject to fulfilment of the requirements and acceptance by the General Committee.
- (II) If a member opts to make choice, he/she will have to apply for his/her son/daughter for associate membership of the club in a plain paper by way of forwarding letter to the Secretary supported by amongst others a declaration of the member to that effect.
- (III) When a permanent member inducts his/her 3 (three) children, he loses his/her right to transfer his/her membership to a third person.
- (IV) If no such induction is made then, on the death of the member as well as his/her spouse the first 3(three) of their

children will be eligible and entitled to apply for membership subject to some conditions attached therewith.

- (V) When a person in the capacity of spouse legally inherits membership from his/her deceased spouse he/she will be termed as “successor member” and he/she have to complete the formalities to become a ‘successor member’ within 2 (two) years of the demise of the member and prior to that he/she has to be endorsed to the official document of the club by the concern Member himself while he/she was alive.
- (VI) A ‘successor member’ subject to certain conditions and provided that his/her deceased spouse had not made 3 (three) of his/her children as members, shall have the right and privilege to make 3 (three) of his/her children as members. In case of remarriage, he/she will lose all of his/her rights and privileges.

8.6 Now, from the submissions of the learned advocates and from the materials on record this court noted the following facts:

- (I) Admittedly, Ahmed Faisal Chowdhury, Ahmed Russel Chowdhury and the petitioner i.e. Farzeen Chowdhury are the first 3 (three) children of late Wahed Asgar Chowdhury.
- (II) Ahmed Faisal Chowdhury and Ahmed Russel Chowdhury have already obtained permanent membership on 15.10.2012 & 09.12.2013 respectively.



- (III) The 3<sup>rd</sup> eldest child of late Wahed Asgar Chowdhury is the petitioner and on her behalf several applications were made to make her permanent member.
- (IV) The club in lieu of considering the said applications granted associate membership in favour of respondent no. 2.
- (V) There is nothing on record to show and no statement from the respondent to support that Shamima Akter alias Shamima Wahed Chowdhury was endorsed to the official document of the club by the concern Member himself while he was alive which is needed to be a 'successor member'
- (VI) While granting associate membership to respondent no. 2 the club relied upon a database which has been annexed as Annexure-7, heirs' certificate of late Wahed Asgar Chowdhury dated 19.04.2012 which has been annexed as Annexure-1, legal opinion dated 14.07.2021 which has been annexed as Annexure-11 and another undated legal opinion which has been marked as Annexure-12.
- (VII) Respondent no. 2 was accepted as associate member by the meeting of the General Committee dated 06.12.2021 while the instant company matter was pending.

8.7 Now, upon examination of the papers and the process relating to the granting of associate membership to the respondent number 2, the following anomalies have been noticed by this court:

- I. Annexure-7 to the Affidavit- in opposition- which appears to be a database and which was relied upon by the club,

contained incorrect and misleading information as to the name of children of late Wahed Asgar Chowdhury as because one Uzzad Chowdhury and Tangila Ruhi Chowdhury was named as children of Wahed Asgar Chowdhury but the admitted fact is that they are not his children at all.

- II. The said data base does not contain any signature of Wahed Asgar Chowdhury.
- III. The Club failed to produce any forwarding letter as well as any declaration of Wahed Asgar Chowdhury as required by the Bye-Laws.
- IV. From Annexure-10 of the Affidavit-in-opposition which was the forwarding letter of Chittagong Club seeking legal opinion from their advocate also contained wrong information as to the children of Wahed Asgar Chowdhury. In the said forwarding the name of the petitioner who is the 3<sup>rd</sup> eldest amongst the children of Wahed Asgar Chowdhury was not included rather respondent no. 2 was placed in the 3<sup>rd</sup> position. Further, the names as mentioned in serial no. 5 and 6 are not children of Waged Asgar Chowdhury. Therefore, it is vivid that the said forwarding letter itself is tainted with misrepresentation of fact, misleading statement and false information.

V. As the forwarding letter of the club was a besmirched one, consequently, the opinion that was generated also suffered from the same vice.

8.8 The natural corollary arrived at from the above facts, circumstances, findings and observations is that the inclusion of the name of respondent no. 2 as member of respondent no. 1 club is tainted with fraud and forgery and principle of law is that *Fraus et dolus nemini patrocinari debent* i.e. fraud and deceit ought to benefit none. Accordingly, this court holds that granting of “associate membership” to respondent no. 2 was neither proper nor legal and the petitioner is entitled to be the member of the respondent number 1 club as the 3<sup>rd</sup> eldest child of her deceased father namely Wahed Asgar Chowdhury.

8.9 One of the submissions of the learned advocate for the respondent number 1-club was that the petitioner herself did not sign the application for membership and therefore, there was no scope to grant membership in her favour. But from Annexure- E-1 to the substantive petition it appears that the reason for refusal was not the same as has been submitted by the learned advocate for the club, rather the reason assigned was different which has been discussed above. Moreover, the said aspirant is herself the petitioner before this court. Therefore, the submission of Mr. M A Hannan, learned senior advocate appearing for the respondent club does not stand at all. Moreover, as it has been found that the dispute in question can be resolved without touching the question of legality of alleged marital relationship between late Wahed

Asgar Chowdhury and Shamima Akter, therefore, the objection of Mr. Hannan on this point is also discarded.

9. In the result, the instant company matter is allowed. Respondent no. 1 i.e. Chittagong Club Limited (Chattogram Club Limited) is hereby directed to rectify the register of its members by excluding the name of respondent no. 2 Samina Akter alias Samina Wahed Chowdhury and thereafter entering the name of the petitioner namely Farzeen Chowdhury as permanent member within 30 (thirty) days from the date of receipt of the copy of the judgment subject to fulfilment of all other conditions.

10. The petitioner intends to donate Taka 1,00,000/- (One lakh) which is to be given in the form of pay order. Out of the said amount Tk.50,000/-(Fifty thousand) to be paid in favour of “Charvabna Baitul Aman Ahle Hadis Mosjid”, A/C No. 18088, Bangladesh Krishi Bank PLC” and Tk.50,000/- (Fifty thousand) to be paid in favour of “Merakona Purbo Para Jame Mosjid” A/C No.5694010013697, Rupali Bank Limited PLC. Upon furnishing receipt of the payment, the order may be drawn up, if so, prayed for.

Let a copy of this judgment be communicated to the respondent Nos. 1 and 3 for doing the needful.

(Sikder Mahmudur Razi, J:)