

* **HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : . May 05, 2008.
Date of Decision: May 14th, 2008

+ CM No. 10153/2007 in WP(C) No. 3969 OF 2003

New Town Cooperative Group
Housing Society Ltd. Petitioner
Through Mr. P.S. Sharda, Advocate

Versus

Financial Commissioner & Ors. Respondents
Through Mr. V.N. Jha, Advocate for
Respondent No. 3/Applicant

CORAM:

* **HON'BLE MR. JUSTICE MANMOHAN SARIN**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the digest? No.

J U D G M E N T

MANMOHAN, J:

1. The present application being CM No. 10153/2007 has been filed by Respondent No. 3 in a disposed off petition under Section 151 CPC seeking appropriate direction to the Cooperative Society to accept payment on such terms and conditions as this Court may deem fit and proper.

2. The facts of this case are that this Hon'ble Court while disposing off the present petition on August 17, 2005 held that the Financial Commissioner had erred in restoring the Applicant's membership of the Cooperative Society as a society cannot function in the absence of prompt and timely contribution by its members. In the said judgment, there is a specific finding that the Applicant had failed to make payment to the Cooperative Society in time. However, as the FAR of the Society had been increased and further as the learned counsel for the Applicant assured that he would make payment as ordered by this Court within four weeks along with interest at reasonable rate, this Court directed the Applicant to pay a sum of Rs. 5,50,000/- plus Rs. 1,50,000/- along with simple interest at the rate of 10 per cent per annum. This Hon'ble Court further directed in the said order that the aforesaid amounts should be paid by the Applicant within four weeks and on the said amount being deposited the Cooperative Society would construct the additional flat for the Applicant. It was made clear in the said order that if there was default in payment of the said amount, the Cooperative Society would be under no obligation to construct the additional flat.

3. Instead of depositing the amount within the time bound period as agreed to by the Applicant's counsel, the Applicant on 15th September, 2005 filed a review petition being RP No. 277/2005 on the ground that the statement of dues as recorded in the order dated 17th August, 2005 was erroneous. However, on 30th March, 2007, this Hon'ble Court dismissed the said review petition on the ground that the Applicant by way of a review petition could not be allowed to make out a new case and more so as the order dated 17th August, 2005 had been passed in the presence of the Applicant's counsel. However, this Court gave liberty to the Applicant to approach the Society with regard to payment of dues. In view of the aforesaid liberty, the Applicant on 13th June, 2007 sent belatedly three cheques totaling to Rs. 8,27,300/-. But the Society on 23rd June, 2007 returned the said cheques on the ground that the same were not in accordance with law. This led the Applicant to file the present application being CM No. 10153/2007.

4. We are of the view that the Applicant is not entitled to any relief as his conduct is not fair and honest. Despite this Court on 17th August, 2005 finding that the Applicant was not entitled to be

restored as a member of the Cooperative Society, yet this court had shown leniency provided Applicant tendered the outstanding amounts within a strict time bound schedule of four weeks. However, subsequently the Applicant tried to wriggle out of his own admission in Court. A Cooperative Society to our mind can only function if its members make prompt and timely contribution. Persistent defaults in making payment – like the Applicant has done in the present case – will only ensure that the Cooperative movement fails. We are of the opinion that the present application has been filed just to take benefit of the phenomenal increase in prices of flats in Delhi by offering payment belatedly after more than two and a half years. We also deprecate the tendency of litigants filing repeated applications in a disposed off matter. Consequently we find that the present application is without any merit and we dismiss it with costs of Rs. 5000/- to be paid to the Delhi High Court Legal Services Committee.

[MANMOHAN]
Judge.

[MANMOHAN SARIN]
Judge.

May 14th, 2008
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