

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.08.2009

+ W.P.(C) 3913/2007

SANJIV KUMAR DIXIT Petitioner

versus

REGISTRAR CO-OPERATIVE SOCIETIES Respondent

Advocates who appeared in this case:-

For the Petitioner	: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. J.N. Gupta, Advocate.
For the Respondent	: Ms. Sujata Kashyap, Advocate for respondent no. 1. Mr. Vinod Mehta, Advocate for respondent no. 2.

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether reporters of local papers may be allowed to see the judgment? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

BADAR DURREZ AHMED, J (oral)

1. The petitioner is aggrieved by the order dated 14.12.2006 passed by the Financial Commissioner in a revision petition under Section 80 of the Delhi Co-operative Societies Act, 1972 (hereinafter referred to as the said Act) whereby the Financial Commissioner upheld the order of the Registrar of Co-operative Societies passed on 05.04.2002 by the said Registrar in the appeal by the petitioner under Rule 35 (7) of the Delhi Co-operative Societies Rules, 1973 (hereinafter referred to as the said Rules) read with Section 26 of the said Act. The petitioner had approached the Registrar of

Co-operative Societies for the reason that his name was not being included as a member in place of his father who had passed away on 09.03.1997. This was despite the fact that the petitioner was declared as a nominee by his late father Mr Vidya Bhushan Dixit who was an original member having membership no. 250 of the said society. The petitioner's appeal before the Registrar of Co-operative Societies was dismissed by the order dated 05.04.2002 on three grounds.

2. The first ground was on the question of limitation. The second ground was that no application had been filed by the petitioner seeking the transfer of membership. The third ground was that the petitioner was not a resident of Delhi and, therefore, stood disqualified in terms of Model Bye-Law no. 5(1)(a) which was also applicable to the respondent society.

3. The learned counsel for the petitioner submitted that none of these grounds can be legitimately used against the petitioner. He submitted that the petitioner's father Mr Vidya Bhushan Dixit was an original member and whose number was 250. The said Mr Vidya Bhushan Dixit died on 09.03.1997. The petitioner (Sanjiv Kumar Dixit) was admittedly a nominee as declared by late Mr Vidya Bhushan Dixit in respect of the said membership. There was another nominee also. He was none other than the petitioner's brother Mr Rajiv Dixit. The said Mr Rajiv Dixit had already given his "No Objection Certificate" in favour of the petitioner. The learned counsel for the petitioner further indicated that the petitioner had informed the Managing Committee of the Society about the death of his father Mr Vidya Bhushan Dixit and had also made a request for transfer of membership in his name. The said information was sent by the petitioner to

the Managing Committee by a letter dated 05.05.1998. According to the learned counsel for the petitioner, no application is necessary for transfer of membership to a nominee, particularly, in view of the provisions of Rule 35(1) read with Rule 35(6). In any event, he states that the application was, in fact, made by virtue of the said letter dated 05.05.1998, a typed copy whereof is at Page no. 30 of the paper book.

4. Thereafter, the Managing Committee passed a resolution in its meeting held on 03.06.1998 to the following effect:-

“Resolution : As proposed by Shri R.P. Kathuria and seconded by Dr. Gyanendra Kumar, it was unanimously passed that Shri Sanjeev Kumar Dixit has apprised the Committee that a member of the society Shri Vidya Bhushan Dixit (Membership No. 161/250) has expired on 6th March, 1998. Along with his letter, he has sent a copy of the death certificate issued by the Registrar of Births and Deaths, Nagar Nigam, Jaipur. It was resolved that the death of Shri Vidya Bhushan Dixit be entered in the register and as per Section 26, Delhi Cooperatives Act, 1972, the interest of the deceased member be given to his nominee, Shri Sanjeev Kumar Dixit, in accordance with law.”

5. Thus, according to the learned counsel for the petitioner, the membership stood transferred to the petitioner and was duly approved by the Managing Committee. Despite such transfer having been made, on 17.08.1998 the Society refunded the amount which had been deposited by the petitioner's father and sent the said amount to petitioner's brother's address at Jaipur. The said refund cheque was erroneously encashed by the petitioner's brother. On coming to know of this error, the petitioner, by virtue of a letter dated 30.11.1998 returned the said sum of Rs. 26,465/- to the Society. The said letter along with the cheque for the said amount was

received by the Society on 02.12.1998.

6. Since no action was being taken on the said letter dated 30.11.1998, the petitioner preferred an appeal under Rule 35(7) read with Section 26 of the said Act before the Registrar of Co-operative Societies and the said appeal came to be dismissed on 05.04.2002 on the said three grounds mentioned above. The matter was taken up in revision under Section 80 before the Financial Commissioner who upheld the order passed by the Registrar of Co-operative Societies. It is in these circumstances that the petitioner is before this court.

7. The learned counsel appearing on behalf of the Society (respondent no. 2) has taken the stand that the previous management was unjustified in refunding the amount deposited by the petitioner's father, once the petitioner had been recognized as a member in place of his father on account of his being a nominee. It is categorically stated in paragraph 4 of the short affidavit filed on behalf of the said respondent Society that it was unanimously decided by the Managing Committee in a meeting held on 31.12.2008 that the rejection of the application for transfer of membership of late Mr Vidya Bhushan Dixit to his son and nominee Mr Sanjiv Kumar Dixit, the petitioner herein, by the previous management, was unjustified and that the present management is not opposed to the transfer of the membership in favour of the petitioner subject to the completion of all formalities and clearance of dues as payable on date. A copy of the resolution has been annexed as Annexure (R2/1) to the said counter affidavit. The resolution insofar as it is relevant reads as under:-

“EXTRACT OF THE RESOLUTION UNANIMOUSLY PASSED BY THE MANAGING COMMITTEE OF MAHARISHI DAYANAND CGHS LTD. AT ITS MEETING HELD ON AUGUST 31, 2008.

RESOLUTION:

1. “The Managing Committee in its meeting had earlier decided to review and withdraw all the pending cases. The committee has reviewed the matter of Sh. Sanjeev Kumar Dixit and observed that the membership of Shri V.B. Dixit was not transferred in the name of his nominee/son Sh.Sanjeev K. Dixit. The application of transfer of membership was rejected without any justification by the previous Managing Committee. The present Managing Committee has considered the facts of the case and the material on record and unanimously resolved to transfer the membership of late Shri Vidya Bhushan Dixit to his nominee/son Shri Sanjeev Kumar Dixit and the Secretary is duly authorized to make a statement to that effect in the honorable High Court.

XXXX XXXX XXXX XXXX XXXX”

8. The learned counsel for the respondent no. 1 (Registrar of Co-operative Societies) has, however, opposed the plea of the petitioner as also that of the respondent Society. According to her, the petitioner was not eligible to become a member on account of the fact that he was not a resident of Delhi on the date on which the application was moved by him. She stated that the petitioner had applied on 05.05.1998 and on that date, in terms of Model Bye-Law no. 5(1)(a), the petitioner was disqualified from being a member inasmuch as he was not a resident of Delhi for the period of three years immediately preceding the date of application.

9. We have heard the counsel for the parties. The first ground on which the petitioner’s appeal before the Registrar of Co-operative Societies was dismissed was the ground of limitation. We agree with the learned counsel

for the petitioner who submitted that the question of limitation itself does not arise because there was no formal rejection of the petitioner's application. On the contrary, he has been able to show that the Managing Committee had, in fact, approved the transfer of the membership of late Sh. Vidya Bhushan Dixit to the petitioner by virtue of the resolution passed by the Managing Committee in its meeting held on 03.06.1998. It is because no action was being taken with regard to the handing over of the refund and return of the amount earlier deposited by Mr Vidya Bhushan Dixit that the petitioner had preferred the appeal under Rule 35(7) read with Section 26 of the said Act. There is actually no formal order passed by the Society rejecting the petitioner's claim/application. There is, of course, another circumstance and that is the question of whether the petitioner had to file an application at all in order to have his name substituted in place of his father's name on the death of the latter. In case no application was necessary, the question of limitation would not arise.

10. This takes us to the consideration of the second ground of rejection of the petitioner's appeal and, that is, that there is no application on record. Although, this is not factually correct inasmuch as the petitioner's application dated 05.05.1998 is on record and had been filed before the Society, we are of the view that no application, as such, would be necessary.

Section 26 to the extent relevant reads as under:-

“26 (1) On the death of a member a co-operative society may transfer the share or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member, or pay to

such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules or bye-laws :

Provided that –

- (i) in the case of a co-operative society with unlimited liability, such nominee, heir or legal representative, as the case may be, may require payment by the society of the value of the share or interest of the deceased member ascertained as aforesaid;
- (ii) in the case of a co-operative society with limited liability, the society shall transfer the share or interest of the deceased member to such nominee, heir or legal representative, as the case may be, being qualified in accordance with the rules and bye-laws for membership of the society or on his application within one month of the death of the deceased member to any person specified in the application who is so qualified;
- (iii) no such transfer or payment shall be made except with the consent of the nominee, heir or legal representative, as the case may be.

(2)
(3)”

11. Section 26(1) is clear that on the death of a member, the Co-operative Society may transfer the share or interest of the deceased member to the person nominated in accordance with the Rules made in this behalf. It also provides that if no person is nominated, then a transfer may be made to such person as may appear to the committee to be the legal heir or legal representative of the deceased member. The other option, as an alternative to transfer the share or interest of the deceased member of the nominated person or such other person, is to pay such nominated person, heir or legal

representative, as the case may be, a sum representing the value of such member's share or interest as ascertained in accordance with the rules or bye-laws. Thus, there are two alternatives available to the Co-operative Society whenever there is death of a member. The first alternative is that a Society may transfer the share or interest to a nominated person or if there is no such nominated person, to such other person as may appear to the Society to be the deceased person's heir or legal representative. The other alternative is that, instead of transferring the share or interest to the nominee or such other person, the Co-operative Society may pay to such nominee, heir or legal representative as the case may be, a sum representing the value of such member's share or interest as ascertained with the rules or bye-laws.

12. These are two alternatives and cannot exist at the same time. It is apparent that in the meeting held on 03.06.1998, the Managing Committee had resolved to adopt the first alternative and had transferred the share and interest of the deceased member to the petitioner who was the deceased member's nominee. Once this decision was taken, there was no question of paying any amount to the nominee. Therefore, the refund of the amount paid by the petitioner's father was clearly erroneous. Since the petitioner's brother had erroneously encashed the refund cheque, the petitioner had, by his letter dated 30.11.1998, returned the said amount to the Society. As the Society was not taking any action on the said letter, the petitioner was constrained to file the appeal before the Registrar of Co-operative Societies.

13. The second proviso to Section 26(1) also makes it clear that in the case of a Co-operative Society with limited liability, which is the case of the respondent (society herein), the society shall transfer the share or interest of

the deceased member to such nominee, heir or legal representative as the case may be, being qualified in accordance with the rules and bye-laws for the membership of the society or on his application within one month of the death of the deceased member to any member specified in the application who is so qualified. Thus, it is clear that an application within one month is necessary only in case the person seeking membership is not a nominee or an heir or legal representative of the deceased member. No application would be necessary when the deceased member has nominated a person to whom the membership is to be transferred. Rule 35(6)(1) of the said Rules also makes this clear. The said Rule prescribes that where a member of the Co-operative Society has not made any other nomination, the Society shall give a public notice inviting claims or objections for the transfer of share or interest of the deceased within the time specified. This makes it clear that where a nomination has been made by a deceased member, there is no requirement for the Society to give any public notice inviting claims or objections in respect of the deceased member's share or interest. The position, therefore, is that insofar as a nominee is concerned, no application is necessary and his right to seek transfer would be crystallized on the date of death of the deceased member, that is, in this case, on 09.03.1997 when Mr Vidya Bhushan Dixit passed away.

14. This takes us to the third ground for dismissal of the petitioner's appeal and that was that the petitioner was not a resident of Delhi. Insofar as this is concerned, the learned counsel for the petitioner has drawn our attention to Notification No. F.47/Legal/Policy/Coop./92/2305-2316 issued by the Government of National Capital Territory of Delhi (Cooperative

Department) on 05.12.2001. The said notification reads as under:-

**“GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI
(Cooperative Department)**

No. F.47/Legal/Policy/Coop./92/2305-2316

Date : 05-12-2001

NOTIFICATION

In exercise of the powers conferred under Section 88 of the Delhi Cooperative Societies Act, 1972, the Hon'ble Lt. Governor of the National Capital Territory of Delhi is pleased to exempt the operation of the condition of Model Bye-laws No. 5(1)(a) during the period from 16.12.1992 to 22.04.1997 with regard to the proof of Residence in respect of the members of Group Housing/House Building Societies.

By order and in the name of the
Lt. Governor of the National Capital
Territory of Delhi

Sd/-
(N. DIWAKAR)
Special Secretary (Cooperation)”

15. It is clear that by virtue of the said notification, operation of condition of model bye-laws no. 5(1)(a) during the period 16.12.1992 to 22.04.1997 with regard to the proof of residence in respect of members of Group Housing/House Building Societies was exempted. Thus, in respect of the date on which Mr Vidya Bhushan Dixit passed away, that is, on 09.03.1997 the requirement for proof of residence had been exempted. It is on that date that the right of transfer of the petitioner stood crystallized and it is that date which would be relevant for the purpose of construing as to whether the petitioner was eligible for the transfer of the share or interest of Mr Vidya Bhushan Dixit in his favour. Therefore, on all three grounds, we find that

the impugned orders are erroneous. The petitioner was entitled to be substituted in place of his father in view of the nomination made by his late father Mr Vidya Bhushan Dixit and in view of the “No Objection Certificate” given by the co-nominee, (that is, Mr Rajiv Dikshit). Thus, the impugned orders are set aside and the respondent Society is directed to transfer the membership in favour of the petitioner, subject to completion of all the formalities and clearance of dues as payable up to date.

The writ petition stands allowed. No order as to costs.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

AUGUST 24, 2009
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