

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 25.08.2009

+ **W.P.(C) 5265/2008**

**SADHBAVNA CO-OPERATIVE GROUP
HOUSING SOCIETY LTD**

..... Petitioner

- Versus -

SALIL AGARWAL

..... Respondent

Advocates who appeared in this case:-

For the Petitioner : Dr Anurag Kumar Aggarwal with Mr Umesh Mishra

For the Respondent : Ms Zubeda Begum

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?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition has been filed by Sadhbavna Cooperative Group Housing Society Limited being aggrieved by the order dated 11.04.2008 in appeal No. 80/2007/DCT being an appeal under Section 112 of the Delhi Cooperative Societies Act, 2003 (hereinafter referred to as 'the said Act'). The said appeal before the Tribunal was preferred again by the society against the Arbitrator's Award dated 26.03.2007 under Section 71 of the said Act. By virtue of the said Award, the Arbitrator had accepted the claim filed by the respondent in connection with his membership and held that his membership should be continued by the society. The issue that has been

raised is with regard to the eligibility of the respondent for becoming a member of the petitioner society.

2. According to the petitioner society, the respondent applied for membership of the society on 13.04.1997 through his guardian and father. At that point of time, the petitioner was only 16 years old. There is no dispute that the fact of the petitioner being a minor was clearly revealed in the application dated 13.04.1997. The case of the petitioner society is that in any event, the respondent not being eligible for membership, could not have been granted the membership of the said society in terms of Section 20(1)(a) of the Delhi Cooperative Societies Act, 1972, which was extant at that point of time. It is on the basis of that that the respondent's membership has been cancelled vide the letter dated 08.09.2005, a copy whereof is at page 38 of the paper book.

3. The respondent was aggrieved by the said cancellation and, therefore, made a claim against the society. The Award dated 26.03.2007 was made in favour of the respondent. Being aggrieved by the said Award, the petitioner society preferred an appeal before the Delhi Cooperative Tribunal. After considering the submissions made by the parties, the Tribunal accepted the argument advanced by the respondent and rejected those which were made on behalf of the petitioner society. The Tribunal noted that it is not denied by the society that the application for membership was made by the respondent through his father as his guardian and that the fact of his being minor was in no way suppressed or concealed from the

society. The Tribunal also placed reliance on a decision of a Division Bench of this Court in **Virender Singh Sethi v Vice Chairman, DDA: 65 (1997) DLT 59 (DB)**.

4. Although the said decision was in the context of the Delhi Development Authority (Management and Disposal of Housing Estates) Regulations, 1968, the reasoning adopted in the said decision was applied by way of analogy in the present case also which is under the Delhi Cooperative Societies Act, 1972. We also note that the Tribunal observed that the petitioner society accepted all the payments towards admission fee and other instalments without any demur, from the respondent. It is also important to note that although the respondent was a minor on 13.04.1997, he attained majority in 1999 and on and from 1999, he was eligible to be a member of the society. He continued to be regarded as a member of the society right upto 2005, when the letter of 08.09.2005 was issued by the administrator. It is, therefore, clear that even after the respondent had become a major, his membership was continued for at least six years before which the action of cancellation was abruptly taken by the issuance of the letter dated 08.09.2005. It is not as if the membership was cancelled before he attained majority. His membership is sought to be cancelled six years after he attained majority and that too after payments had been accepted from him from time to time. At no earlier point of time, were his payments refunded or was it pointed out that the petitioner was not eligible for membership. In any event, on the date his membership was sought to be cancelled, the petitioner was no longer a minor.

5. In these circumstances, we are inclined not to interfere with the order passed by the Delhi Cooperative Tribunal. The writ petition is dismissed. No orders as to costs.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

**AUGUST 25, 2009
SR**