

R-20 & 21

% 02.12.2010

Present : Mr. Sudhir Nandrajog, Sr. Adv. with Ms. Sahila Lamba,
Advocate for the petitioner.

+ WP (C) No.5458/2007 & W.P.(C) No. 5463/2007

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Mr. Sudhir Nandrajog, learned senior counsel states that he has already returned the file of this case to the petitioner. We find from the record that no fresh vakalatnama has been filed. The matter is effective item no.2 on the Regular board. The society ought to have made alternative arrangements and thus now we proceed to decide the matter on the basis of the record.

The only question which is sought to be raised in these writ petitions is from which date interest is payable to the expelled members once the amount deposited by them is refunded. The interest has been directed to be paid at 7% per annum simple interest from the date of deposit. We are of the considered view that the concurrent findings of the Arbitrator and of the Delhi Cooperative Tribunal do not call for any interference under Article 226 of the Constitution of India. The relevant Rule 36 A of the Delhi Cooperative Societies Rules, 1973 (hereinafter referred to as the said Rules) is as under:-

WP (C) No.5458/2007 & W.P.(C) No. 5463/2007

page 1 of 4

"36A. Penalty for belated payment or equalisation charges for new membership on enrolment at the advanced stage of construction, and payment of interest to a member who has resigned his membership in a group housing cooperative society

1. In case of default in payment of demand in cooperative groups housing society by the members, equalisation charges on enrolment as a member against vacancy and payment of interest on resignation by member, the maximum rate of interest charges shall be as under, which shall be approved by a resolution of the general body of the society:

- (a) For default of payment of instalment upto six months-@ 12% per annum.
- (b) For default of payment of instalment upto one year-@ 15% per annum.
- (c) For default of payment of instalment for more than one year-@ 18% per annum.
- (d) Equalisation charges/interest to be charged from the member enrolled at the advance stage of construction -@24% per annum.
- (e) Interest to be paid by a group housing society to a resigned/expelled member on the amount deposited after deducting the administrative expenditure incurred by the society-@ 7% per annum.

2. The Registrar shall be competent to review the above rates periodically."

A reading of the aforesaid Rule shows that equalization charges/interest is charged by the society from the member enrolled at an advance stage of construction at 24% per annum. This interest should be payable from the date when the amount was due. Similarly, sub-clause (e) of Clause-1 would in similar

12

fashion, require that the interest be paid to the resigned/ expelled members at 7% per annum and thus the monetary interests of the society are more than taken care of. The Clause would have no meaning in the manner sought to be raised by the society i.e., that interest should be paid only from the date of the approval of expulsion for the reason that the interest would then be payable only on any delayed payment by the society, and which surely is not the intent of Rule 36A.

The Award specifically deals with this issue in para 15 which reads as under:-

"15. However, Section 36A has still a role to play as it is quite evident that the vacancy caused by the claimant must have been filled by a new member and this rule provides the interest to be charged from a new member who has entered the society at a belated stage. The equalization charges/interest to be charged from the member enrolled at the advanced stage of construction as sub-clause (d) of the sub-section 36 A is 24% per annum, which clearly covers the interest which is paid to a resigned/expelled member. It is only 7% as compared to 24% to be taken from a new member. The interest from the new member is also so much that it includes the administrative charges and, therefore, the society gets it due from the new member so far as the administrative charges also are concerned. The society has not placed any evidence in support of its contention that it occurred heavy losses due to resignation of the Claimant."

We may note that the issue of constitutionality with regard to the validity of Rule 36A of the Delhi Cooperative Societies

Rules, 1973 has already been given up by the petitioner as recorded in the order dated 6.01.2009.

We are in complete agreement with the aforesaid reasoning which is also approved by the Tribunal and there is no justification for our interference under Article 226 of the Constitution of India.

Dismissed.


SANJAY KISHAN KAUL, J.

DECEMBER 02, 2010
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VALMIKI J. MEHTA, J.