

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 12.05.2011*

+ **R.S.A.No. 333/2006**

M/S LORD BUILDER PVT. LTD.

.....Appellant

Through: Mr. Rajesh Aggarwal, Advocate.

Versus

REGISTRAR OF COMPANIES

.....Respondent

Through: Nemo

\CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J. (Oral)

1 This appeal has impugned the judgment and decree dated 18.07.2006 which has endorsed the finding of the trial Judge dated 11.04.2005 whereby the suit filed by the plaintiff i.e. M/s Lord Builders Pvt. Ltd. against the two defendants (seeking a declaration and mandatory injunction to the effect that the

defendant No. 2 society has been wrongly registered with defendant No. 1; decree of declaration had been sought declaring that this order of defendant No. 1 registering defendant No. 2 as an association under the provisions of Societies Registration Act, 1860 (hereinafter referred to as the 'said Act') be declared illegal and void; defendant No. 1 be directed to deregister defendant No. 2) had been dismissed. The impugned judgment had endorsed this finding.

2 The plaintiff is a company duly registered under the Indian Companies Act; it is the owner of the building Rajender Jaina Tower-I, situated in 18 Wazirpur Community Centre, Industrial Area, Delhi-110052. Plaintiff had licensed individual spaces to different persons as per the agreements signed between the concerned parties. Some illegal occupants of the building had formed an illegal association i.e. defendant No. 2 and by a misrepresentation has got itself registered with defendant No. 1. It is averred that Section 20 of the said Act deals with the various societies which may be registered and a society dealing with the maintenance of a building is not permitted such a registration. Attention has been drawn to Ex.PW-1/3 & Ex.PW-1/4 which are letters dated 26.05.2001 and 10.06.2001. It is pointed out that Ex.

PW-1/4 is a letter addressed by defendant No. 2 to the plaintiff
RSA No.333/2006

wherein certain conditions of maintenance have been mentioned. It is pointed out that the maintenance of a building cannot be the object of a society registered under Section 20 of the said Act. Attention has also been drawn to the provisions of Section 4(7)(8) of the Delhi Apartment Ownership Act, 1986 (hereinafter referred to as the 'Apartment Act'). It is pointed out that an association can be registered only in terms of the Apartment Act; maintenance of a building does not come within the definition of 'Social Welfare' which has been relied upon in the impugned judgment to dismiss the claim of the plaintiff. This is a perversity. It is liable to be set aside.

3 This is a second appeal. It has been admitted and on 15.11.2006, the following two substantial questions of law had been formulated.

1. Whether the Registrar was competent to register a society, which according to the appellant is against the provisions of Section 1 and Section 20 of the Society Registration Act, 1860?
2. Whether the registration of the respondent No. 2 with the Registrar of Society is in conflict and contrary to the provisions of Apartment Ownership Act?"

4 Record shows that the appeal had been dismissed for non-prosecution on 01.04.2011; on an application, the matter had thereafter been restored. It has been heard on the merits today.

The impugned judgment had returned the finding as under:-

"I have considered the rival contentions Section 1 of Societies Registration Act, 1860 deals with Societies formed by memorandum of association and its registration. It reads.:

Societies formed by memorandum of association and registration
:- Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint stock (***), form themselves into a society under this Act."

Section 20 of this Act reads as under :-

To what societies Act applies. The following societies may be registered under this Act:-

Charitable societies, the military orphan funds or societies established at the several presidencies of India, societies established for the promotion of science, literature of the fine arts, for instruction, the diffusion of usefully knowledge (the diffusion of political education), the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public or public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs."

There is a state amendment and in its application to Union Territory of Delhi vide Societies Registration (Delhi Amendment) act 1983. It has been provided that in Section 20 for the words "Promotion of Science, literature or for the fine arts" the words "Promotion of Social welfare, activities, conducive to the protection and improvement of the natural environment (including forest, lakes, rivers and wildlife), competition for living creatures, literature, science, sports, games or for the fine arts" will be substituted.

The appellant probably has lost sight of the amendment incorporated in the year 1983 and has, therefore, come up with the plea that respondent No. 2
RSA No.333/2006

could not have been registered as a society as it is not covered u/s 20 of the Act. It has been pointed out by the Ld. Counsel for the respondent no. 1 that respondent NO. 2 had some of its objects which read :-

1. To look after the welfare of the occupants of the building and organize welfare programmers for them.
2. To organize religious, cultural, social programmes on various occasions.
3. To do all such other acts, deeds and things as are cognate to the objects of the associations and are incidental or conducive to the attainment of the above objects of the associator. Clearly the objects of respondent No. 2 are covered u/s 1 and 20 of the Societies Registration Act, 1860.

There is, therefore, no force in the contention raised by the appellant that the registration of respondent No. 1 was illegal and unlawful. The appellant has also failed to show as to how the registration of the societies contravenes the provisions of Delhi Apartments Ownership Act, 1986. As a consequence, I hold that the present appeal has no merits and is accordingly dismissed.”

5 The provisions of Section 20 and the amendment of 1983 had been expounded in detail. The objects of respondent No. 2 (i.e. the Association) shows that these objects squarely fell within the definition of ‘Promotion of Social Welfare’ and this had been noted in the impugned judgment. The findings in the impugned judgment do not in any manner call for any interference. In no manner can they be said to be perverse.

6 Reliance upon the provisions of Apartment Act is an argument devoid of any force. The Apartment Act had been promulgated in 1986 with the following objects:-

“An Act to provide for the ownership of an individual apartment in a multi-storeyed building and of an undivided interest in the common areas and

facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto”

7 If the submission of learned counsel for the appellant is accepted, the provisions of Section 20 of the said Act will have to be given a go by. There is clearly not intended. Reliance by learned counsel for the appellant upon the judgment in W.P.(C) No.1959/2007 O.S.Bajpai Vs. The Administrator (Lt. Governor of Delhi) & Ors is wholly misplaced.

8 Substantial question of law is accordingly answered in favour of the respondent and against the appellant. There is no merit in the appeal. Dismissed.

INDERMEET KAUR, J.

MAY 12, 2011

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