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

+ RSA 105/2009 & CM No.10841/2009

NAV JAGRITI COOP.GROUP HOUSING SOCIETY Appellant
Through: Mr. R.N. Bhardwaj, Adv.

versus

NAIPAL SINGH & ANR. Respondent
Through: Respondent No.1 in person

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER 1240

% 09.11.2011

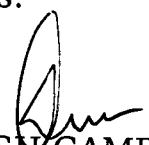
Learned counsel for the parties state that the Registrar of Cooperative Societies had appointed an Administrator vide order dated 5.5.2009 and the Administrator took over the affairs of the Managing Committee of the petitioner society on 9.9.2011 and the appointment of the said Administrator is now under challenge before the Financial Commissioner. Counsel further submits that vide order dated 22.9.2011, the order of the Registrar Cooperative Societies, dated 5.9.2011, has been stayed by the Financial Commissioner.

In the present Regular Second Appeal filed by the appellant, challenge has been laid to the order dated 17.4.2009 passed by the First Appellate Court who set aside the order of the learned Trial Court and remanded the matter back to the Trial Court to decide the

suit filed by the respondent on its merits. The controversy in the present matter had arisen as a suit for permanent injunction, which was later amended to seek an additional relief of declaration, was preferred by the respondent who was a member of the petitioner society to seek a restraint order against the appellant from holding any AGBM on 3.12.2006 on Item Nos.1 to 10 of the Agenda which involved major policy and financial matters of the Society. The respondent also sought a decree for permanent injunction to restrain the appellant to hold any AGBM after 3.4.2006 also till the matter in dispute remains *sub judice* before the Financial Commissioner. In the said suit, an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 was preferred by the appellant to seek rejection of the said plaint filed by the respondent on the premise that the suit is not maintainable due to the lack of jurisdiction of the Civil Court in view of the bar created under Sections 70, 129 and 132 of the Delhi Cooperative Societies Act, 2003 (DCS Act for short). The said application moved by the appellant was dismissed by the learned Trial Court. Feeling aggrieved by the said order, the respondent had preferred an appeal and in the said appeal, the learned First Appellate Court set aside the order passed by the learned Trial Court and remanded the matter back for decision in the said suit on its merits. The said order of the First Appellate Court is

now under challenge by the petitioner society. Now, since during the pendency of the Regular First Appeal, the Registrar of Cooperative Societies had appointed an Administrator to take over the charge of the said Society vide order 5.11.2011 and the said order for appointment of the Administrator is now under challenge before the Financial Commissioner, in which proceedings the Financial Commissioner has stayed the operation of the order passed by the Registrar of Cooperative Societies. This Court is of the view that the suit filed by the respondent has practically become infructuous as the entire controversy now is before the Financial Commissioner.

In light of the said developments, the present appeal now cannot sustain. Parties are relegated to the said forum created under the DCS Act for the redressal of their grievances.


KAILASH GAMBHIR, J

NOVEMBER 09, 2011
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