* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of decision : 7th May, 2015**

\+ **W.P.(C)No.1454/2014 & CM No. 3030/2014**

PRAVEEN MAHAJAN & ORS. ..... Appellant

Through: Mr. Rajiv Dutta, Sr. Adv. with Mr. Siddharth Dutta, Mr. Kumar Dushyant Singh and Mr. Shravan Kumar Yammanur, Advs.

versus

REGISTRAR COOPERATIVE SOCIETIES & ORS. ..... Respondent

Through: Mr. Rajiv Vig, Adv.
Mr. S.K. Kaushik, Adv. with Mr. R.K.Jain, Assistant Collector for R-3
Mr. Sunil Sabharwal, Adv. for R-4
Mr. Subodh Kumar, Adv. for R-8 & 9

\+ **W.P.(C) No. 2363/2014 & CM No. 4986/2014**

DEVENDER SHARMA & ORS. ..... Appellant

Through: Mr. Rajiv Dutta, Sr. Adv. with Mr. Siddharth Dutta, Mr. Kumar Dushyant Singh and Mr. Shravan Kumar Yammanur, Advs.

versus

REGISTRAR COOPERATIVE SOCIETIES & ORS. ..... Respondent

Through: Mr. Rajiv Vig, Adv.
Mr. S.K. Kaushik, Adv. with
Mr. R.K.Jain, Assistant Collector for R-3
Mr. Sunil Sabharwal, Adv. for R-4
Mr. Subodh Kumar, Adv. for R-8 & 9

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

GITA MITTAL (J) ORAL

1. W.P.(C)No.1454/2014 has been filed by 24 persons who are admittedly regular and bonafide members of the Neelkamal Cooperative Group Housing Society Ltd. – respondent no. 2 herein who had been allotted flats which they are occupying for a considerable period.

2. W.P.(C)No.2363/2014 has been filed by 23 persons who are admittedly regular and bonafide members of the Neelkamal Cooperative Group Housing Society Ltd. – respondent no. 2 herein who have been allotted flats on different dates which they are occupying for a considerable period.

3. The facts giving rise to the instant writ petition are within a narrow compass and to the extent necessary, are noted hereafter. It appears that the respondent had 102 validly enrolled members. The respondent no.2 society had applied and was allotted land on 12th March, 1984 by the

Delhi Development Authority in Vikaspuri, New Delhi.

4. In order to enable the society to raise construction, the society required contributions from its members. To enable payments, at the instance of some of its members, the respondent no. 2 society made an application dated 31st December, 1986 for a loan of ₹51.52 lakhs from the Delhi Coop. Housing Finance Corporation Ltd.-respondent no. 4 herein, a cooperative housing finance corporation. It is an admitted position that the application for a loan was made on behalf of and for the benefit of only 67 members out of the total of 102 members of the respondent no. 2 society. The remaining members did not seek or avail any loan amount. Only these persons had availed the loan facility. Out of the 67, details of twenty three petitioners who have taken various amounts is reflected in the tabulation placed by the respondent no. 2 society before us.

5. The remaining thirty five members opted either to avail loans from their employers or other financial institutions including banks, some of them made arrangements from their own sources, instead of taking any kind of loan.

6. The twenty four petitioners before us in W.P.(C)No.1454/2014 are those members of the respondent no.2 society who did not take any amounts whatsoever from the amounts advanced by the respondent no.4. This position is undisputed. The names of these twenty four persons do not feature in the list of 67 members of the society who are shown as the persons on whose behalf the respondent no.2 society had availed the loan of ₹51.52 lakhs.

7. The petitioners in W.P.(C)No.2363/2014 have placed before us 'no loan dues certificates' issued to all the petitioners by the respondent no.2-society. It is obvious that this certificate has been issued upon their clearing the entire loan liability.

8. We are informed that pursuant to our orders dated 28th August, 2014, the respondent no. 3 had also undertaken the verification of the above submissions on behalf of the petitioners as well as the correctness of the no objection certificates relied upon by those who had availed the loan and repaid the same. As per the report dated 5th November, 2014, the respondent no. 3 has reported that he had found that the no objection certificates issued to all the petitioners were valid except the petitioner no.3 who was obliged to make payment of a sum of ₹1,57,112/- as on 30th September, 2014. Subsequently, the factum of payment of even this amount by the petitioner no. 3 has been verified by the respondent no.3. These persons thus cannot be made or held liable for any amount towards the loan taken for other persons by the respondent society from the respondent no.4 who are not paying their dues.

9. The twenty three petitioners before us in (W.P.(C)No.2363/2014) are thus members of the respondent no. 2 society who had availed the facility but had repaid the same in full. This position is undisputed. The names of these 23 persons, feature in the list of 67 members of the society who are shown as the persons on whose behalf the respondent no. 2 society had availed the loan of ₹51.52 lakhs. However these petitioners had repaid the same as verified by respondent no.3 as noted above.

10. It appears that in order to secure the financial facility advanced by respondent no. 4 to the respondent no. 2, the respondent no. 2 had executed on 9th September, 1987 a loan agreement as well as a mortgage deed. This amount of ₹51.52 lakhs was disbursed in three instalments which were towards the liability of the 67 members of the respondent no.2 society.

11. The respondent no. 2 is categorical that the loan amount was never apportioned towards any liability which enured to the petitioners in W.P.(C)No.1454/2014 before us.

12. So far as the status of the borrower is concerned, it is trite that a person can be a defaulter only if he had availed a financial facility which he had not repaid.

13. Inasmuch as defaults were committed by some persons (out of the 67 members on whose behalf loans were taken), towards the discharge of the liability towards respondent no. 4, it was constrained to make an application under Section 84(i) of the Delhi Cooperative Societies Act, 2003 before the Registrar of Cooperative Societies-respondent no. 1 This application was filed against the society-respondent no.2, its office bearers as well as 67 loanee members. The respondent no. 4 prayed for issuance of recovery certificates against these persons. The Registrar of Cooperative Societies on 6th May, 2008 did issue a recovery certificate.

14. It is noteworthy that no liability at all was attributed by the society to the present petitioners. No notice of these proceedings was issued to the petitioners. There is also no admission by these petitioners to the

effect that they were liable for any amount to the respondent no. 2 or respondent no.4.

15. It appears that some of the defaulting members of the respondent no.2 society had invoked the writ jurisdiction of this court by way of W.P.(C)No.5278/2012. While disposing of the writ petition, by the order dated 27th August, 2012, this court had directed the respondent no. 4 to take effective steps for early completion of recovery of the loan dues.

16. Pursuant to the said order, it appears that the Lieutenant Governor of Delhi appointed respondent no.3 herein (an employee of the respondent no. 4) as the Assistant Collector Grade I/recovery officer. The petitioners before us have objected that it was the respondent no.3 who had been prosecuting or defending all litigation on behalf of the respondent no.4 in respect of the loan advanced to the respondent no.2 and consequently ought not to have been appointed as the recovery officer. It is submitted that no person can be a judge in his own cause, least of all be responsible for execution of such orders as well.

17. Despite the aforenoted position, subsisting on record, the respondent no. 3 proceeded to pass an order dated 14th August, 2013 at the instance of the defaulting members of the respondent no.2 society. It appears that the respondent no. 3 thereby apportioned the liability of the defaulting members towards several members of the society as the petitioners who have either not obtained the loan at all or had duly repaid their dues at the appropriate time in accordance with demands raised by the respondent no.2 i.e. the petitioners in these two writ petitions. In fact,

the petitioners assail this order on grounds of malafide. It has been vehemently contended by Mr. Rajiv Dutta that this order was for the benefit of the chronic defaulters and was a malafide attempt to coerce the petitioners into making payments of loans for which they were not responsible. It is further submitted that the respondent no.3 had acted negligently inasmuch as a huge liability was being attributed to the petitioners which had accumulated merely because no effective action for recovery of amounts against the defaulting members had been pursued by the respondent no.4.

18. To substantiate these submissions, it is further pointed out that the respondent no.3 went to the extent of returning cheques of the defaulting members.

19. The order dated 14th August, 2013 was followed with a decision dated 23rd December, 2013 wherein, making reference to the order dated 27th August, 2012 of the writ court, the objections of the petitioners with regard to the recovery action being taken against them were disposed of on the ground that the objections had lost sanctity because of the court orders.

20. Yet another writ petition being <u>W.P.(C) No.7370/2013</u> thereafter came to be filed again by the defaulting members this time seeking directions to the respondent no. 3 to accept proportionate shares of their dues in terms of the aforesaid orders dated 14th August, 2013 and 23rd December, 2013. Directions were also sought to recover proportionate shares to liquidate the loan liability from all members/GPA

holders/respondents of the respondent no.2 society. This writ petition was disposed of by an order passed on 25th November, 2013. In this order, it was inter alia noted thus :

> "10. In view of the above, we direct as follows:-
> (i) The respondent no.4 shall accept tenders of amounts made in terms of the order dated 14th August, 2013 in Execution Case No.526/2008-2009 from the members of the respondent no.3/Society. Such amount shall be towards the discharge of the liability of the members under the order dated 14th August, 2013.
> (ii)In case there is a variation of the liability of the petitioners in any proceedings pending before the Delhi Co-operative Tribunal or by any court, the petitioners shall be bound by such adjudication and shall be liable to make good the deficiency between the amount which is tendered in terms of the order dated 14th August, 2013 and the adjudication of apportionment as on 30th September, 2013.
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> xxx xxx xxx
>
> (iv) In case the adjudication by any forum or court results in reduction/assessment of further liability of a member who has made payment in terms of the order dated 14th August, 2013 as well as the order being passed by us today, it shall be the responsibility of respondent no.1 to forthwith return the excess amount with interest at the rate of 15.5% per annum from the date of payment."
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> 4. We are informed that some of the members of the society filed objections before the respondent no. 4 disputing liability to pay any amount under the order dated 14th August, 2013. These objections are stated to be pending even on date."

21. It appears that the objections filed by the petitioners were disposed of by the impugned order dated 23rd December, 2013 observing that the objections has lost sanctity and that all parties were bound by the orders of the High Court.

22. So far as the observation that all parties were bound by the orders passed by this court are concerned, the same cannot be faulted. However, the petitioners had raised specific objections to the recovery action initiated by the respondent no. 3 against persons who had never availed the loan or having taken the same had duly repaid it. These objections had to be decided in accordance with the specific directions made by the court.

23. So far as the attribution of liability against petitioners is concerned, the same is completely without jurisdiction and basis. Before us Mr. Rajiv Dutta has placed a list of 67 members who have actually availed the loan and not paid their dues. The same list has been placed by the respondent no. 4 as well. The original record has been produced by the respondent no. 3 before us. There is not even the remotest suggestion anywhere that the petitioners in W.P.(C)No.1454/2014 availed even a penny out of the loan advanced by the respondent no.4 or got any benefit thereunder. So far as the petitioners in W.P.(C)No.2363/2014 are concerned, the respondents have verified the no dues certificates after payments were made by these petitioners. In this background, so far as the petitioners in the writ petitions are concerned, no recovery action for the loan which was applied for by the respondent no.2 from the respondent

no. 4 can either be initiated or be proceeded with against the petitioners. The respondent nos. 3 and 4 shall remain bound by this position recorded by us.

24. The order dated 25th November, 2013 of this court had noted that there may be a variation of the liability of the petitioners in proceedings which may be pending before any forum or court. In para 4 of the order dated 25th November, 2013, this court had also noted that objections to the order dated 14th August, 2013 were pending. The impugned order dated 23rd December, 2013 has clearly been passed without application of mind. No consideration of the specific objections or the factual narration made by the objectors has been even noted let alone considered. The respondent no. 3 was bound to have taken note of the facts which have also been placed before us and have been noted heretofore in the present order which were all relevant and material for the adjudication of the liability of the persons to whom notice had been issued by the order dated 14th August, 2013. The impugned order dated 23rd December, 2013 against the present petitioner therefore cannot stand in the eyes of law and is hereby set aside and quashed.

25. Learned counsel appearing for the respondent no. 4 has vehemently contested the quantification of the amounts reflected by the respondent no. 2 in the list of the defaulting members. This issue does not concern this court inasmuch as we are merely examining whether any liability could be levied against the present petitioners. So far as the quantification by the respondent no. 2 qua the members who availed loan facility and

have not repaid it is concerned, the same is left for adjudication before an appropriate forum. The same is not the concern of the petitioners against whom no liability could be levied.

26. In view of the above, the orders dated 14th August, 2013 and 23rd December, 2013 as well as all action taken by the respondent nos. 3 and 4 against the petitioners in both the writ petitions are hereby set aside and quashed.

This writ petition and application are allowed in the above terms.

GITA MITTAL, J

P.S.TEJI, J

MAY 07, 2015
kr/aj