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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision : 22nd September, 2015

+ W.P.(C) 6349/2013

INDU

..... Petitioner

Through : Mr. Gaurav Puri, Advocate with
Mr. R. P. Malhotra, Ms. Nupur Pandey
and Mr. Varun Bhardwaj, Advocates.

versus

THE MODEST KETKI CGHS LTD & ANR. Respondents

Through : Mr. Sibbo Sankar Mishra and
Mr. Shahid Anwar, Advocates for
respondent No. 1.

Mr. Naushad Anand Khan, Addl.
Standing Counsel for Govt. of NCT of
Delhi for RCS/R-2.

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W.P.(C) 6350/2013

PROMILA KOCHAR

..... Petitioner

Through : Mr. Gaurav Puri, Advocate with
Mr. R. P. Malhotra, Ms. Nupur Pandey
and Mr. Varun Bhardwaj, Advocates.

versus

THE MODEST KEKI COOP. GROUP HOUSING
SOCIETY LTD. & ANR.

..... Respondents

Through : Mr. Sibbo Sankar Mishra and
Mr. Shahid Anwar, Advocates for
respondent No. 1.

Ms. Niti Jain, Advocate for Mr. Anuj
Aggarwal, Addl. Standing Counsel for
Govt. of NCT of Delhi/R-2.

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+ W.P.(C) 6352/2013

VED PRAKASH NANGIA

..... Petitioner

Through : Mr. Gaurav Puri, Advocate with
Mr. R. P. Malhotra, Ms. Nupur Pandey
and Mr. Varun Bhardwaj, Advocates.

versus

**THE MODEST KEKI COOP. GROUP HOUSING
SOCIETY LTD. & ANR.**

..... Respondents

Through : Mr. Sibbo Sankar Mishra and
Mr. Shahid Anwar, Advocates for
respondent No. 1.
Mr. Satyakam, Addl. Standing Counsel
for GNCTD with Mr. Nikhil Bhardwaj,
Advocate for GNCTD.

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+ W.P.(C) 6353/2013

PARAMJIT BHATIA

..... Petitioner

Through : Mr. Gaurav Puri, Advocate with
Mr. R. P. Malhotra, Ms. Nupur Pandey
and Mr. Varun Bhardwaj, Advocates.

versus

THE MODEST KETKI CGHS LTD & ANR.

..... Respondents

Through : Mr. Sibbo Sankar Mishra and
Mr. Shahid Anwar, Advocates for
respondent No. 1.
Mr. Santosh Kumar Tripathi, Addl.
Standing Counsel for GNCTD of Delhi
for RCS.

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+ W.P.(C) 6355/2013

SAVITA RANI

..... Petitioner

Through : Mr. Gaurav Puri, Advocate with
Mr. R. P. Malhotra, Ms. Nupur Pandey
and Mr. Varun Bhardwaj, Advocates.

versus

THE MODEST KETKI CGHS LTD & ANR. Respondents
Through : Mr. Sibbo Sankar Mishra and
Mr. Shahid Anwar, Advocates for
respondent No. 1.
Mr. Satyakam, Addl. Standing Counsel
for GNCTD with Mr. Nikhil Bhardwaj,
Advocate for GNCTD.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. Rule DB. With the consent of the parties all the five writ petitions are set down for final hearing and disposal.
2. Learned counsel for the petitioner submits that the basis facts in all the matters are identical and all the petitioners claim to be Founder Members of respondent No.1 Group Housing Society (hereinafter referred to as 'Society'). According to the petitioners, all the Members of the Society have been allotted flats barring the five petitioners.
3. The petitioners received a communication dated 22.01.1998 from Registrar of Societies (hereinafter referred to as "Registrar") informing the petitioners that the Registrar had received an intimation about acceptance of their resignation by the Managing Committee of the Society on 05.02.1996. Petitioners were required to confirm as to whether they had resigned or not. The petitioners on different dates informed the Registrar that they had not resigned from the membership 02.02.1998 in W. P. (C) 6349/2013. The petitioners received a letter dated 14.06.2010 from the Registrar calling upon them while giving reference of

their replies that they may take recourse to Section 17 of Delhi Co-operative Societies Act, 2003 (hereinafter referred to as “Act”) by invoking Arbitration Clause. The statement of claim filed was rejected by the Joint Registrar, who was appointed as an Arbitrator by an order dated 21.10.2010 on the grounds of limitation. The appeal filed before the Tribunal was dismissed on 05.09.2013 also on the ground that claim was beyond limitation. The relevant part of the said order reads as under:

“We have already mentioned that the cause of action to raise a dispute had arisen for the appellants on the dates on which they had received the letters of alleged resignations. Infact, the appellants, by sending letters to the RCS office challenging the resignations, had in a way, tried to raise a dispute. What stopped these appellants to raise a dispute within period of limitation from the date of the letters received from the office of RCS intimating them about their alleged resignations? It has not been explained in any of the appeals.”

4. Mr. Puri, learned counsel for the petitioners submits that the resignation letters sought to be relied upon by the Society are forged and fabricated documents and petitioners never tendered their resignation and therefore they could not have raised a dispute as it was not within their knowledge that resignation letters had been manufactured by the Society. It is submitted that petitioners were shocked to receive the letter dated 22.01.1998 and once reply was sent and no further response was received either from the Society or from the Registrar, the petitioners were under the bonafide belief that their reply was accepted. Learned

counsel for the petitioners prays that the matter should have been decided by the Arbitrator on the merits.

5. On the other hand, Mr. Mishra, learned counsel for the respondent No.1/Society submits that the stand of the petitioners is dishonest and not based on record. The petitioners have failed to place a single document to substantiate their argument that they had not resigned. He further contends that petitioners did not pay single penny towards the cost of the land, construction charges and other charges. He further submits that in case the petitioners had not resigned, they would have certainly approached the Society to find out the stage of construction and offered to make payment with regard to the cost of the construction. Learned counsel for the respondent Society further submits that the issue at hand would have no effect on the rights of the petitioners as in the absence of having made any payment either for the cost of land or cost of construction no right would flow in their favour even assuming the petitioners succeed before the arbitrator.
6. We have heard learned counsel for the parties and we dispose of these five writ petitions on the following agreed terms.
 - i. Interim order granted by this Court stand vacated. Subject to the Society filing an undertaking before this Court within one week that five flats allotted shall be subject to final outcome of the Arbitration proceedings.
 - ii. The matter would be remanded back to the Arbitrator who would hear the matter on merits within two months.

- iii. No special equity will flow in favour of the petitioners and it would be open for the Society to pass such order as they made deem fit on the ground that no payment has been received by them from the petitioners.
 - iv. Both parties agree to cooperate with Arbitrator and the Arbitral Authority.
 - v. We make it clear that the Arbitrator and Arbitral Authority will decide the matter unaffected by the observations made by this Court.
 - vi. Rights of all the parties are kept open.
7. With these directions, the present writ petitions along with pending applications are disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 22, 2015

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