

\$~27

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 7575/2016
KAMAL SINGH YADAV

..... Petitioner

Through Mr Sanchit Garg and Mr Ankur
Yadav, Advs.

versus

THE PRESIDENT SECRETARY, MAYURDHWAJ
COOPERATIVE GROUP HOUSING SOCIETY LTD. & ANR

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

O R D E R

% 29.08.2016

CM 31228/2016 (exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 7575/2016

The petitioner was expelled by the Cooperative Society and the expulsion was upheld by the Registrar of Cooperative Societies vide order dated 23rd December, 2003. The reason was that the petitioner had failed to pay the construction and other charges. The petitioner had paid Rs.10,000/- on 23rd August, 1989 and no other and further payment was made.

The petitioner challenged the aforesaid expulsion before the Delhi Cooperative Tribunal, which appeal was transferred to the Financial Commissioner in the year 2006. The primary ground of challenge was that the notice dated 18th November, 2003 issued by the Registrar of Cooperative Societies was addressed to a wrong person inasmuch as the envelope had mentioned the name of the addressee as 'S.K. Yadav' whereas the name of

the petitioner is Kamal Singh Yadav. However, other details and address were not questioned and challenged.

The revision petition had remained pending before the Financial Commissioner from 2006 till 23.04.2010. Order sheets reveal repeated adjournments.

On 23rd April, 2010, the appeal was dismissed by the Financial Commissioner recording as under:-

“23/4/2010

Present: Clerk of the counsel for petitioner

Sh. R.N. Bhardwaj, Advocate for respondent

The case was adjourned for arguments on 17/5/2007. Thereafter, the counsel for petitioner only presented himself once i.e., on 30/1/09. In the last DOH, it was recorded that last opportunity was given to the counsel for petitioner to present the case, failing which the case will be dismissed due to non-prosecution today. The counsel for petitioner again failed to appear. The case is, therefore, dismissed due to non-prosecution.

File be consigned to R/Room after completion.

FC, Delhi.”

After waiting for a period of one year and six months, the petitioner filed an application under Order IX Rule 4 read with Section 151 of the Code of Civil Procedure seeking restoration. The blame was put on the lawyer/advocate appointed by the petitioner. This application was dismissed vide order dated 6th March, 2012 which records as under:-

“I have gone through the contents of the application and have also heard the counsel for the petitioner. In normal circumstances this Court is extremely liberal in its approach to applications for restoration. It is better to hear the arguments of both sides after perusing the documents on record and then decide a case on merits. Dismissing a case on technical grounds is the shorter, painless way forward, but justice suffers. However, in this case, the order of 23.4.2010 shows that both counsel for the petitioner as well as the petitioner

himself are to blame. If a petitioner is involved or interested in a case he would be inquiring about its progress from his counsel regularly, at a very least. However, this case has been characterized by sheer indifference and neglect on the part of both petitioner as well as his counsel. Even if the petitioner had come forward, say within a few days of the order of 23.04.2010, any reasonable Court would have relented. However, approaching the Court after a hiatus of more than one and a half years seeking restoration would be crossing all bounds of reasonableness. The application not having convinced the court in any respect deserves dismissal.”

The petitioner thereafter filed a review application raising identical grounds as were raised in the application for restoration. It is obvious that the review application was not maintainable. The review application was dismissed for the said reason by an order dated 29.05.2015.

Looking the aforesaid facts, we are not inclined to interfere with the impugned order. The delay at every stage is apparent. The petitioner was expelled in 2003. The total payment made by the petitioner was Rs.10,000/- only.

The writ petition is dismissed. However, we clarify that this dismissal would not bar and prohibit the petitioner not seeking refund of the amount deposited in accordance with law. We clarify that we express no opinion on the said claim.

SANJIV KHANNA, J

SUNITA GUPTA, J

AUGUST 29, 2016/*rd*