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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION (CIVIL) No. 11738/2016**

Date of decision: 15th December, 2016

KANGRA ADARSH CO. OPERATIVE GROUP HOUSING
SOCIETY Petitioner
Through Ms. Prema Priyadarshini, Advocate.

versus

DELHI CO. OPERATIVE TRIBUNAL & ORS. Respondents
Through Nemo.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

Kangra Adarsh Cooperative Group Housing Society in this writ petition impugns the order dated 26th October, 2016 passed by the Delhi Cooperative Tribunal affirming the decision of the Registrar, Cooperative Societies dated 10th August, 2015.

2. The dispute pertains to expulsion and cancellation of membership of Gautam Sharma by the petitioner Society, approval for which was not granted by the Registrar, Cooperative Societies.

3. The contention of the petitioner Society is that the respondent-Gautam Sharma had acquired membership by making false assertion in his affidavit filed on 6th February, 2008 by not disclosing that his wife was the owner of another flat bearing No. K-207 in the same society.

4. We are not impressed with the said argument for the simple reason that the Cooperative Society was very much aware of the fact that the wife of Gautam Sharma was the owner of flat No. K-207 and a member of the society. Insistence for such declaration was not mandated by law. The Tribunal on the said aspect has rightly referred to the second proviso to Section 87 of the Delhi Cooperative Societies Act, 2003, which reads as under:-

“Provided further that no such dis-qualification shall be applicable in case of a person who had acquired property on Power of Attorney or through Agreement for Sale and on conversion of the property from lease hold to free hold on execution of Conveyance Deed for it, if such person applied for the membership of the co-operative society concerned.”

The provisions of the Section being a statute, would override the bye-laws in case of any conflict. Applicability of the proviso is not disputed and challenged. Gautam Sharma had purchased flat No. K-290 in the said Cooperative Society from one C.M. Ramamurthy. He relies upon Conveyance Deed dated 23rd December, 2005.

5. There is a civil dispute pending between respondent No. 2-Gautam Sharma and Col. (Retd.) Mohinder Singh, the original allottee of flat No. K-290. Physical possession of the constructed flat was handed over to Col. (Retd.) Mohinder Singh on 23.10.1983, whereafter it was let on rent to C.M. Ramamurthy in 1986. The dispute and the claim made by Col. (Retd.) Mohinder Singh; that the documents relied upon by Gautam

Sharma are forged and fabricated, is pending civil adjudication in CS (OS) No. 3615/2014. Counsel for the Cooperative Society submits that they are also a party to the said civil suit. Counsel further states that some criminal cases have been filed against Gautam Sharma, but she is not aware of the exact charge sheet, etc.

6. The controversy before us is very limited and restricted. The Society would abide by the order, whether interim or final, of the Court. The impugned order(s) do not restrain or prevent Col. (Retd.) Mohinder Singh, who is not a party to the arbitration proceedings, from filing an appropriate application before the civil court or before the appropriate forum regarding his claim or rights. On the said aspect, we have not made any observation or expressed any opinion.

7. We do not see any reason to interfere with the impugned order passed by the Tribunal dated 26th October, 2016 and with the aforesaid observations, the writ petition is dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

DECEMBER 15, 2016
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