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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 7629/2015 & CM No. 14798/2015**

C.P. SHARMA

..... Petitioner

Through: Mr. S.K. Sharma, Advocate.

versus

REGISTRAR OF COOPERATIVE SOCIETIES & ANR

..... Respondents

Through: Mr. Gautam Narayan, ASC, GNCTD
alongwith Mr. Shatrajit Banerji,
Advocate for R-1.
Mr. Kewal Singh Ahuja, Advocate
alongwith Ms. Prarthana Sampath,
Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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15.02.2016

The petitioner is aggrieved by an order of the Delhi Cooperative Societies Tribunal (DCST) whereby his claim that the Registrar of Cooperative Societies wrongly rejected his complaint of exclusion from the benefits through membership of Jai Bhawani Co-operative Group Housing Society, was rejected.

The brief facts are that the petitioner became a member of the respondent society in 1983. The affairs of the society especially allotments and the list of its members came under scrutiny during

enquiry and investigation by the Central Bureau of Investigation (CBI). Claiming for the first time that his name was excluded from the registered members on the ground that he had allegedly resigned, petitioner approached the Assistant Registrar in 2007. He contended *inter alia* that the allegation with respect to his resignations were false and sought to rely upon the report of the CBI in that regard. Assistant Registrar examined the claim and, after applying his mind by a reasoned order, rejected it. That rejection became a subject matter of the appeal to the Tribunal. The Tribunal confirmed the order of the Registrar. Its order in turn became the subject matter of a previous writ proceeding in W.P.(C) No. 5489/2011. Apparently, whilst approaching this Court, the petitioner was joined by several others.

The writ petition was disposed of on 03.08.2011 in the following terms:-

“W.P.(C) No. 5489/2011 and CM No. 11200/2011

* *Learned counsel for the petitioners seeks to withdraw the writ petition and the application as he states that one of the petitioners has already approached the forum of arbitration and the others may be similarly desirous of invoking arbitration. Dismissed as withdrawn.”*

This breathed a fresh lease of life as to the petitioner’s complaint of alleged wrongful exclusion from the membership of the society. He yet again approached the Registrar who once again held that the complaint was unmerited. The Registrar observed in his order dated 29.04.2013 as follows:-

“5. In the claim petition it is apparent on records that the claimant admitted that he was duly informed about the

change of address of the society and he also admitted and furnished documentary evidences that his name was forwarded to the DDA by the society through RCS for allotment of land in the year 1997. The claimant has not mentioned that in between the year 1997 to year 2006, if he had contacted Management of the society to enquire about the status of land allotted to the Society and enquired from M.C. about making payments to be made towards cost of land, cost of constructions or had shown any interest into the affairs of the society.

6. *On the basis of pleadings and the oral arguments addressed by both the parties, I observed that the claim petition does not fulfil one of the most important ingredients essential for admission of claim petition under Section 70 of DCS Act, 2003 to be referred under Section 71 of the DCS Act, 2003 in arbitration because the present dispute raised in the Claim petition is time barred which is admittedly beyond the period of six years as stated in Section 70(4) of the DCS Act, 2003. Besides this the claim is not maintainable and cannot be entertained on the ground that the previous claim petition filed by Claimant has already been rejected/dismissed for reference under Section 71 of the DCS Act, 2003. In the proviso Claimant petition the Claimant had virtually sought the same identical relief which is sought in this fresh claim petition, however, in a more elaborate manner, which otherwise makes no difference under the present circumstances. The said earlier petition which was not found fit for reference under Section 71 of the DCS Act, 2003 and was dismissed by the AR (North) without granting any liberty to Claimant to file fresh Claim petition after the completion of CBI investigation as alleged by the claimant in his petition. Furthermore the said order was challenged before the Cooperative Tribunal which also dismissed the appeal and against the same the Claimant, filed Writ Petition, which was subsequently withdrawn by the Claimant. I have also observed that while allowing the Claimant to withdraw the said Writ Petition, the*

Hon'ble High Court had also not given any liberty to file a fresh Claim petition in the present manner. Under the circumstances where neither any specific order passed by any Court of law or any quasi-judicial authorities in the previous petition, the present petition, the present Claim Petition which admittedly filed at a belated stage is not supported with any application for condonation of delay as per Section 70 (4) (c) of DCS Act, 2003. Hence in the absence of any application for condonation of delay disclosing any valid ground for entertaining the present claim petition is time barred and cannot be entertained. In view of the above, I am of the considered opinion that the claim petition is time barred as such is not a fit case for making reference under Section 71 of DCS Act, 2003. I therefore dismiss it. No order as to cost."

The Tribunal again confirmed its decision stating as follows:-

" 7. In the earlier claim petition all these facts which have been made the basis to file the present claim petition, were mentioned. The order dt. 20.03.07 passed by the Assistant Registrar merged with the order dt. 22/05/09 passed by the earlier bench. The earlier bench had given detailed reasons to dismiss the claim petition. It was observed as under:-

After joining the society and paying Rs. 100/- in the year 1984, the appellant does not appear to have bothered to do anything to pursue his membership in the society. No documentary evidence like exchange of letters, receipt of money paid as construction cost etc has been produced to show that the appellant made sincere efforts to pursue his membership in the society and that he contributed something towards the construction cost. Now that the flats have been built up with the funds paid by other persons, the appellant cannot all of a sudden come forward and demand a float for which he has not contributed anything at all. Taking an overall view of the matter, we have decided to reject

the appeal and to confirm the Asstt. Registrar's order dated 30.03.2007. We order accordingly."

Learned counsel urges that the petitioner's claim was justified and that he could not have agitated it before 2007. Counsel highlighted that the petitioner became aware of the alleged resignation letter and the forgery only in 2006 upon receipt of the report of the CBI and consequently there was no delay on his part in approaching and seeking relief. He also relied upon the judgment of the Division Bench in ***Aakash Jindal vs. Registrar Co-Op Societies***, 152 (2008) DLT 562. On the other hand, learned counsel for the Society urged that this petition is bereft of merits having withdrawn the previous writ petition, the same claim could not have been agitated. Counsel highlighted that though the petitioner was enrolled as a member in 1983, he did not seek any relief or agitate his rights for more than two decade and approached the respondent for the first time in 2007. Learned counsel for the Society relied upon the order of this Court in ***Naresh Kaushik vs. Bhagwati Co-operative Group Housing Society Limited & Ors.*** in W.P.(C) No. 11034/2009 decided on 08.04.2010.

It is evident from the above discussion that this is atleast the second inning with respect to the petitioner's alleged grievance. The petitioner's contention that he was unaware of the fraud perpetuated upon him inasmuch as the alleged forgery of his resignation came to light only in 2007 *prima facie* appears to be attractive. However, the society is correct in contending that even if such were the case, there was no explanation why the petitioner did not seek any relief for 23 years. More importantly, the earlier award was confirmed by the

Tribunal; the writ petition filed by the petitioner and others were permitted to be withdrawn. The Court recorded the petitioner's contention that some of the petitioners had approached the Registrar for relief. This did not mean that the present petitioner could be allowed to re-agitate the same contention after having suffered concurrent orders which were not set aside.

Having regard to these facts, the Court is of the opinion that this petition is absolutely bereft of merits. It is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

FEBRUARY 15, 2016

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