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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 3414/2015**

Y K GUPTA & ORS

..... Plaintiff

Through: Mr. P. Sureshan and Mr. T.K.
Sharma, Advocates

versus

DR SUNEEL MAGGO & ORS

..... Defendant

Through: Mr. Vikas Nagwan for D-1 with
Defendant no.1 in person
Ms. Nishi Jain for D-2
Mr. Rakesh Munjal, Sr. Adv. with
Mr. Mohd Arif and Mr. Girish
Aggarwal for D-3/Club

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

08.02.2016

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Defendant no.1 appears in person along with his counsel and defendant nos.2 and 3 appear through counsel. The present suit has been filed by the plaintiff to seek the following substantive reliefs:

a) pass decree of declaration in favour of the plaintiffs and defendant no.2 and against defendant no.1 and 3 that the orders passed by this court in CS(OS) No.3349/2014 dated 27.03.2015 and 22.04.2015 are null and void as the same was a result of fraud and

collusion played by the parties to the suit and also the suit was not maintainable in view of the relevant legal provisions.

b) pass a decree of permanent prohibitory injunction against the defendant no.3 by preventing them from using the name of PNB Staff Cooperative House Building Society Ltd in any visible or printed form along with the name of Bank Enclave Club in sign boards, circulars and letter heads as both the entities are distinct and different.

c) pass a decree of rendition of account as preliminary decree against the defendant no.3 by directing them to file rendition of account about the funds collected by them from defendant no.2 based upon the order passed by this court in suit CS(OS) No. 3349/2014 as the order in that suit was result of collusion and fraud.

d) pass final decree of recovery of amount in favour of defendant no.2 and against the defendant no.3 for the amount found to be transferred by defendant no.2 in favour of defendant no.3 in view of the order passed by this court in suit CS(OS) No.3349/2013 after the rendition of account.

e) pass decree of monetary compensation against the defendant no.1 and 3 for misguiding this court and compelling to pass an order in favour of defendant no.3, for enabling it to illegally collect amount from defendant no.2, and direct them to deposit such amount found to be fit and proper to the funds of Delhi High Court legal services authority or Prime Ministers relief fund.

The factual background is that defendant no.1 filed a civil suit being CS(OS) No.3349/2015. The said suit had been filed by defendant no.1

herein Sh. Suneel Maggo to seek the relief of declaration. The first defendant in the said suit was PNB Staff Housing Cooperative House Building Society Ltd. (for short, House Building Society). The second defendant impleaded was the Bank Enclave Club (for short, BEC) – also a registered society, which is separate and distinct from the aforesaid House Building Society.

The declaration sought by Sh. Suneel Maggo, the plaintiff in the said suit was that defendant no.1, i.e. the House Building Society is under a legal obligation to immediately release the sum of Rs.20 lakhs in favour of the BEC in order to meet the expenses for development and the demanding facilities as enumerated in para 8 of the said plaint. A further declaration sought was that defendant no.1, i.e. the House Building Society shall regularly pay Rs.1 lakh every month to the BEC for meeting the day to day expenses and maintenance of the Club and that in case further amounts are required by defendant no.2, the same shall also be payable by defendant no.1.

It appears that upon issuance of summons, appearance was put on behalf of defendant nos.1 and 2 in the said suit by the same counsel. It is informed that common written statement dated 14.11.2014 was filed by both the defendants. On 27.03.2015, when the matter came up before the court, an undertaking was given on behalf of the defendants *“that the money which has been collected by the society shall be used for the re-development and benefit of the society and for no other purpose and accounts shall be periodically maintained. No further orders are called for in the suit”*.

On that basis, the suit was disposed of by the court. Thereafter, an application being I.A. No.8205/2015 was moved under Section 152 CPC,

whereby the plaintiff sought addition of the word “Club” prior to the words “of the Society” in the third last line of para 23 of the order dated 27.03.2015. This application was not opposed and was allowed on 22.04.2015. Resultantly, the decree passed by the court, after amendment is to the effect, *“that the money which has been collected by the society shall be used for the re-development and benefit of the club of the society and for no other purpose and accounts shall be periodically maintained. No further orders are called for in the suit”*.

The grievance of the plaintiff is that the relief obtained in CS(OS) No.3349/2014 was collusive. It is pointed out that defendant no.2, the House Building Society is a separate and distinct entity altogether, from defendant no.3, BEC, which is a separate society registered under the Societies Registration Act. The management of the two is separate and distinct and the defendant no.2 House Building Society has not promoted defendant no.3. The defendant no.2, House Building Society has no control over the management of the defendant no.3 Club.

Defendant no.1, who appears in person, and counsels for defendant nos.2 and 3 also candidly state that it has not been resolved by the general body of members of defendant no.2 – the House Building Society, to either set up, or manage, or fund the affairs of defendant no.3, BEC.

In these circumstances, all the defendants concede that the order dated 22.04.2015, whereby the words “Club of the Society” were inserted could not have been so inserted, as the funds of the House Building Society cannot be used for any other purpose other than for the purpose of managing the affairs of the House Building Society. Consequently, with the consent of parties, the said order dated 22.04.2015 passed in I.A. No.8205/2015 in

CS(OS) No.3349/2014 is set aside.

It is informed that by defendant no.3 that Rs.12,813/- was transferred by the defendant House Building Society to the defendant Club. The said amount shall be restituted by the defendant Club to the House Building Society forthwith.

Consequently, in addition to the aforesaid, a decree as prayed for in prayer (b) is also passed in favour of the plaintiff and against the defendants. The plaintiff gives up the relief sought in prayer (e), since the defendants have made the aforesaid concession.

The suit stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

FEBRUARY 08, 2016

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