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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3545/2017 & C.M. No. 15459/2017 (stay)
LATA TYAGI Petitioner
Through: Mr. Rajesh Kumar, Advocate
versus

REGISTRAR CO OPERATIVE SOCIETY AND ANR...Respondents
Through: Mr. Ankur Chibber, Advocate for R-1.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
% **24.04.2017**

CM 15460/2017 (exemption)

Subject to the petitioner filing the certified/typed/legible copies of the documents annexed with the petition within four weeks, the application is allowed and disposed of.

W.P.(C) 3545/2017

1. The present petition has been filed by the petitioner assailing the order dated 14.10.2016, passed by the Delhi Co-operative Tribunal dismissing her appeal filed under Section 112 of Delhi Co-operative Societies Act, 2003 (hereinafter referred to as '**the Act**'), preferred against an order dated 3/4.06.2015 passed by the learned Dy. Registrar under Section 70 of the Act in an arbitration case filed by the respondent No.2/Society.
2. The brief facts of the case are that the petitioner is a member of the respondent No.2/Society, occupying flat No. 96, Ashirwad Apartments, Plot

No. 74, I.P. Extension, Delhi-92. In the year 1988, the respondent No.2/Society passed a resolution informing the members interested in allotment of parking space for two-wheelers/cars, to deposit certain amount. The amount required to be deposited for a car parking space was fixed as Rs.17,000/- and for a scooter parking space was fixed as Rs.7,000/-.

3. The petitioner claimed that in response to the above notice, she had deposited a sum of Rs.17,000/- with the respondent No.2/Society in February 1988, against Receipt No.5979, seeking allotment of a car parking space.

4. The version of the respondent No.2/Society is that on 2.4.2005, they had issued a memo to the petitioner calling upon her to vacate the space being used by her for parking her car as she had not applied for allotment of a car parking space. Thereafter, the respondent No.2/Society had issued a memorandum to the petitioner calling upon her to vacate the car parking space on the ground that she had illegally occupied the same without paying any amount towards the allotment. The petitioner however failed to comply with the said notices. On 22.5.2008, an advisory was issued by the respondent No.2/Society to the petitioner to vacate the car parking space. Yet again, she did not take any action. Finally, an eviction notice dated 16.1.2014 was issued by the respondent No.2/Society to the petitioner.

5. The petitioner has pleaded that she had replied to the captioned notices dated 02.4.2005, 22.5.2008 and 16.1.2014 issued by the respondent No.2/Society stating *inter alia* that she had paid the requisite charges for allotment of a car parking space and had enclosed therewith a photocopy of

the Receipt issued by the Society.

6. Not satisfied with the petitioner's reply, the respondent No.2/Society approached the respondent No.1/Registrar of Co-operative Society for appointment of an Arbitrator to adjudicate the dispute with the petitioner and respondent No.1 appointed an Arbitrator on 27.7.2015, for adjudicating the said dispute under Section 71 of the Act.

7. After notices were issued to the parties calling upon them to appear before the learned Arbitrator, the petitioner filed a reply to the Claim Petition of the respondent No.2/Society whereunder, amongst others, she raised a preliminary objection that the said claim was barred by limitation as the dispute has been raised after 25 years of the use of the car parking space by her. The said objection was considered and dismissed by the learned Arbitrator vide order dated 03.6.2015, wherein it was held that the claim petition filed by the respondent No.2/Society was not barred by limitation for the reason that a dispute existed between the parties that touches upon the constitution, management and business of the respondent No.2/Society and falls under the ambit of Section 70 of the Act.

8. Aggrieved by the aforesaid order, the petitioner had filed an appeal before the Delhi Co-operative Tribunal which was also dismissed vide order dated 14.10.2016 with an observation that since she is a member of the respondent No.2/Society and has been using the car parking space without payment of the requisite amount, it cannot be stated that the claim of the Society is barred by limitation. In the meantime, the arbitration proceedings continued before the learned Arbitrator subject to a condition imposed by the Tribunal that only after the appeal filed by the petitioner is disposed of,

shall a final order be passed by the learned Arbitrator.

9. After hearing the parties and affording several opportunities to the petitioner to produce the Receipt of Rs.17,000/- allegedly issued by the Society, an Award was pronounced on 03.12.2016, holding inter alia that the petitioner was illegally occupying the car parking space and she had not been able to produce any document to verify her claim that she had actually paid the charges of Rs.17,000/- for allotment of the car parking space. As a result, she was directed to vacate the car parking space in question.

10. Admittedly, the petitioner has not preferred any appeal against the Award dated 03.12.2016. Instead, she has filed the present petition praying inter alia for setting aside the order dated 14.10.2016, passed by the learned Tribunal. There is no explanation worth the name offered by the petitioner for approaching this court after a delay of six months to assail the order dated 14.10.2016.

11. Learned counsel for the petitioner states that his client does not propose to assail the Award dated 03.12.2016 and she is only aggrieved by the finding returned by the learned Tribunal in the order dated 14.10.2016 whereunder, her objection with regard to the claim of the respondent No.2/Society being barred by limitation, was turned down.

12. Learned counsel for the petitioner contends that the dispute between the parties had arisen as long back as in the year 2005 and in those circumstances, it ought to be held that the cause of action if any, had accrued in favour of the respondent No.2/Society in the year 2005 and resultantly, the claim petition filed in the year 2015 for seeking eviction of the petitioner from the subject car parking space, is barred under Section 70 (4) (a) (ii) of

the Act. He also clarifies that though an objection has been taken by the petitioner that she has become an owner of the car parking space by adverse possession, he does not wish to press the same.

13. When a bundle of facts that constitute a cause of action keep repeating on a continuous basis, then the cause of action is said to go on *de die in diem*, that is to say that it continues from day to day and becomes a 'continuous cause of action'. The core character of a continuous cause of action is the continuing source of injury which makes the person committing that injury, liable for its continuance. In other words, if the actions of a person causing injury or wrong are repeated, then the cause of action would be treated as continuous for suing such a person and would accrue in favour of the injured party, on a day-to-day basis. In the present case, though the petitioner has been called upon by the respondent No. 2/Society time and again to stop parking her car in the car parking space in question, which had not been allotted to her, she has failed to comply. Instead, the petitioner is continuing to encroach on the common area which would only mean that the cause of action would be treated as continuous for purposes of suing her as her actions have been causing a continuous wrong to the respondent No.2/Society. Thus a fresh period of limitation would begin to run, each time the said wrong is committed.

14. In such circumstances, it is held that the cause of action would be a recurring one and shall accrue in favour of the respondent No.2/Society on a day-to-day basis. The petitioner is admittedly, continuing to occupy the car parking space despite the fact that she has been declared as a trespasser under the Award dated 03.12.2016, passed in favour of the respondent No.2/Society and the said Award has not been challenged by her so far and

nor does she propose to assail it in appeal.

15. Therefore, the plea of the petitioner that the dispute raised by the respondent No.2/Society is barred by limitation is repelled as being baseless. Irrespective of the said legal position, we have called upon learned counsel for the petitioner to produce before us, atleast the photocopy, if not the original of the receipt of Rs.17,000/-, allegedly issued in favour of the petitioner by the respondent No.2/Society for allotment of the car parking space. If not the receipt, then the passbook of the petitioner's saving bank account issued by her Bank, reflecting a debit entry of Rs.17,000/- in favour of the respondent No.2/Society would be a persuasive document. He however states that neither the original, nor the photocopy of the Receipt is available with the petitioner, nor is she in a position to produce her Bank passbook for the relevant period. This takes the wind out of the plea of the petitioner that she is a lawful allottee of the car parking space in question or had paid any amount to the respondent No.2/Society for its allotment.

16. It must not be forgotten that the respondent No.2/Society owes an obligation to its members to ensure that there is no encroachment on the common areas of the complex, and the parking spaces be used only by those members who have been allotted the same, on payment of requisite charges. The petitioner has miserably failed to produce the receipt of Rs.17,000/- allegedly issued by the respondent No. 2/Society or her Bank passbook before any forum and not even on the asking of this court. The patience shown by the respondent No.2/Society, by repeatedly requesting the petitioner not to encroach on a space that had not been allotted to her in the first place, has been grossly abused by her. She cannot be permitted to perpetuate the encroachment in the common area.

17. In view of the above, this Court is not inclined to entertain the present petition which is dismissed in *limine* along with pending application, being devoid of merits.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

APRIL 24, 2017

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