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

+ **W.P.(C) 5133/2017**

PANKAJ ROY WADHWA AND ORS Petitioners
Through: Mr. S.D. Wadhwa, Advocate

versus

REGISTRAR COOPERATIVE SOCIETIES AND ORS

..... Respondents

Through: Mr. Shadan Farasat, Advocate with
Mr. Ahmed Said, Advocate for R-1 and R-2.
Mr. Sanjay Singh, Advocate for R-3/DDA.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER
31.05.2017

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1. The present petition has been filed by four petitioners, who claim to be members of the respondent No.4/Sarai Sidhu Ilaqa Co-operative Group Housing Society Ltd. praying *inter alia* for issuing directions for refund of a sum of Rs.32,18,767.50 with interest, that the respondent No.3/DDA had forfeited on cancelling the allotment of a parcel of land made in favour of the Society, vide letter dated 28.02.1994. Pertinently, at that time, the respondent No.3/DDA had refunded a sum of Rs.31,76,414.50 paise to the respondent No.4/Society.

2. Vide order dated 29.01.2003 passed by the respondent No.1/RCS, the Society was directed to refund the amounts deposited by the members with interest at the prevailing rate after proper verification of the members. It is

claimed by Mr. Wadhwa, learned counsel for the petitioners that though the respondent No.4/Society had filed a writ petition in this Court, registered as W.P.(C) 614/1995, challenging the action of the respondent No.3/DDA of forfeiting the earnest money of Rs.32,18,767.50 paise and the said petition was admitted for regular hearing on 12.10.1995, the same was not prosecuted effectively by the Society. As a result, the petition was dismissed on 11.10.2005. Subsequently, on a restoration application being filed by the Society, the said petition was restored to its original position vide order dated 21.11.2005 and yet again, as none had appeared on behalf of the Society, it was ultimately dismissed for non-prosecution on 04.02.2009.

3. After waiting for eight long years, the petitioners have filed the present petition stating inter alia that the respondent No.3/DDA be directed to refund the earnest money deposited by the respondent No.4/Society together with interest and call upon the office bearers of the Society to compensate them for the harassment and agony caused to them.

4. A perusal of the order dated 29.01.2003, passed by the respondent No.1/RCS reveals that the petitioners were duly represented by Mr. S.D. Wadhwa, Advocate in the said proceedings as well and he had requested for refund of their deposits alongwith interest on a grievance that the Society had refunded amounts to several other members, but not to them.

5. The plea for refund of amounts deposited by the petitioners herein was however opposed on behalf of the respondent No.4/Society and it was stated that 31 members had not been refunded their deposits on different grounds. An objection was also taken to the effect that Mr. S.D. Wadhwa, Advocate was not authorised to appear on behalf of the four members (the petitioners herein) except for the petitioner No.1, which plea was upheld by

the respondent No.1/RCS in the order dated 29.01.2003. Ultimately, the respondent No.1/RCS had opined that the Society must return the amount deposited by the members, with interest.

6. If the petitioners had a grievance against the order dated 29.01.2003 passed by the respondent No.1/RCS, they ought to have taken immediate steps to assail the same before the appellate forum, which for reasons best known to them, was not done.

7. We may further note that a specific averment has been made by the petitioners in para 19 of the petition to the effect that the petitioners have filed a writ petition against the Society, which is pending adjudication in this Court. On calling upon learned counsel for the petitioners to furnish the details of the said petition, he states that the submission made in para 19 above is incorrect and erroneous and that no such petition has been filed by the petitioners.

8. We have also enquired from the counsel for the petitioners that if the petitioners were aware of the fact that the respondent No.4/Society had not been diligent in prosecuting the writ petition filed by it in this Court that was dismissed for non-prosecution on two occasions, whether any steps have been taken by the petitioners or other similarly placed members of the Society to seek intervention or permission to step into the shoes of the Society to prosecute the said petition, which was dismissed as long back on 04.02.2009. However, learned counsel states that no such steps have been taken by the petitioners in that regard.

9. In the course of arguments, we have on our own made efforts to verify the status of W.P.)(C) 614/1995 from the website of the High Court and it transpires that the said petition was listed on 10.02.2015, before the Bench

of Gita Mittal, J and P.S. Teji, J. and the following order was passed on an application filed by the petitioners:-

“CM Nos.20557-20559/2014 in W.P.(C) 614/1995

1. *The applicant makes a grievance that he was compelled to move these applications as the amounts deposited by him since the year 1992 have not been refunded by the petitioner-Society. The petitioner complains that several representations to the Society as well as the Registrar of Cooperative Societies have been of no avail.*
2. *The writ petition was filed by the Society assailing the action of forfeiture of its deposit by the DDA. This writ petition was dismissed for non-prosecution as back as on 4th February, 2009. The Registrar of Cooperative Societies is not a party herein.*
3. *Given the nature of the grievance of the appellant, the present applications are not the correct remedy. The applicant really has a dispute with the petitioner-Society for which appropriate proceedings under Section 70 of the Delhi Co-operative Societies Act, have to be initiated.*
4. *In view of the above position, learned counsel for the applicant prays for leave to withdraw these applications with liberty to invoke the appropriate remedy in accordance with law.*
5. *The applications are dismissed as withdrawn with liberty as prayed.*
Dasti.”

10. When confronted with the aforesaid order, counsel for the petitioners has no explanation to offer except for admitting that he did file an application on behalf of the petitioners herein, in the aforesaid petition, which was ultimately withdrawn.

11. Apart from the fact that the petitioners have a remedy under Section 70 of the Delhi Co-operative Societies Act, the present petition is even otherwise, hopelessly barred by limitation. Besides the above, we are not

inclined to entertain the petition as the petitioners have deliberately withheld material information from the Court and been selective in the averment made in the petition thereby keeping the Court in the dark with regard to the application filed by them in W.P.(C) 614/1995 and the orders passed thereon. But for the fact that we had smelt a rat, taken steps to dig out the proceedings in the above petition, the order dated 10.02.2015 would have never come to light.

12. The petition is accordingly dismissed in *limine*.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 31, 2017

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