

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 9th May, 2018**

+ **CS(OS) No.634/2004**

USHA AGGARWAL **Plaintiff**

Through: Ms. Babita, Adv.

Versus

**THE PUNJABI BAGH CO-OPERATIVE
HOUSING SOCIETY LTD. AND ANR.** **Defendants**

Through: Mr. P.D. Gupta, Sr. Adv. with
Mr. Atul Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff instituted this suit, on 26th May, 2004, for specific performance of an agreement of sale of plot no.50, Road No.78 *ad measuring* 1733 sq. mtrs., East Punjabi Bagh, New Delhi and in the alternative to recover damages for breach of contract in the sum of Rs.4.50 crores, pleading (i) that the defendant no.1, on 14th June, 1950 was registered in the name of Refugee Cooperative Housing Society Ltd. under the provisions of the Bombay Act VII of 1925 as then extended to Delhi; (ii) that at the time of registration of the defendant no.1, very few people were enrolled as its members and majority of the present members of the defendant no.1 were enrolled subsequently; (iii) that the bye-laws adopted by the defendant no.1 under the Delhi Co-operative Societies Act, 1972 are contrary to the bye-laws framed at the time of registration of defendant no.1 and are not applicable to the defendant no.1 which was formed in 1950 and thus the bye-laws adopted by defendant no.1 under the Delhi Co-operative Societies Act are not enforceable; (iv) that however the bye-

laws adopted by the defendant no.1 in the year 1950 are not available to the plaintiff and must be available with the defendant no.1 and the defendant no.2 who is the Secretary of the defendant no.1; (v) that the defendant no.1, after coming into existence in the year 1950, acquired freehold land and developed it into plots and transferred the said plots to its members, by executing sale deeds of freehold rights in the said plots; (vi) that as distinct from aforesaid, under the Delhi Co-operative Societies Act, 1972, land is allotted by the land owing agency by executing leasehold rights in favour of the society and subsequently the society executing sub-lease hold rights in favour of its members; (vii) that the defendant no.1, by way of inviting proposals, either by way of publication in newspaper or issuing circulars or affixing upon notice boards of the defendant no.1, has sold various plots of land to its members and outsiders also who were subsequently enrolled as members of the defendant no.1; (viii) that various persons including the office bearers of the defendant no.1 have purchased more than one plot and are in occupation of the same; (ix) that plot no.50, Road No.78 ad-measuring 1733 sq. mtrs., East Punjabi Bagh, was a “spare plot”; (x) in April / May, 2003, the defendant no.1 invited offers from the public at large for purchase of the said plot; (xi) the plaintiff, vide her letter dated 16th June, 2003, made an offer for purchase of the said plot for a consideration of Rs.4.50 crores and paid a sum of Rs.10,00,000/- by way of earnest money; (xii) the defendant no.1, vide its letter dated 22nd July, 2003, communicated to the plaintiff the acceptance by the members of the Managing Committee of the defendant no.1, in the meeting held on 22nd July, 2003, of the offer of

the plaintiff and of “little hitch for getting clearance from the office of the Registrar Co-operative Societies” and further informed the plaintiff that “in case there is some reservation from the Registrar’s office” the defendant no. 1 will “not be able to enter into this deal” and will return the amount of Rs.10,00,000/- to the plaintiff; (xiii) that thus, there has been a concluded contract for sale of plot in question and the clearance from the office of Registrar, Co-operative Societies ‘is more here as stipulated in the terms of the contract’; (xiv) that the plaintiff performed all her obligations by depositing Rs.10,00,000/- and the defendant no.1 had to obtain necessary clearance from the Registrar, Co-operative Societies and the plaintiff was to be informed thereafter; the plaintiff had to pay the balance amount of Rs.4.40 crores but the defendant no.1 failed to take necessary steps to obtain clearance from the Office of Registrar, Co-operative Societies; (xv) the defendant no.1, vide letter dated 27th September, 2003, ‘cancelled the offer of the plaintiff’ ‘owing to the failure of the plaintiff to procure the clearance from the Registrar Co-operative Societies’ and called upon the plaintiff to obtain refund of Rs.10,00,000/-; (xvi) that the defendant no.1 could not have cancelled the offer, after acceptance thereof and whereupon binding agreement had come into existence between the plaintiff and the defendant no.1; (xvii) the clearance from the office of the Registrar Co-operative Societies was to be obtained by the defendant no.1 and the plaintiff could not have contacted the office of the Registrar Co-operative Societies because she had no *locus standi*; (xviii) the plaintiff, vide her letter dated 7th October, 2003 requested the defendant no.1 to obtain necessary permission /

clearance and informed of her readiness and willingness to pay the balance sale consideration of Rs.4.40 crores; (xix) that the defendants became dishonest since the prices of the property had gone up and without following due process as adopted earlier of advertisements and issuing tender, accepted Rs.51 lacs as earnest money from Sh. Sanjay Jain and agreed to sell him the plot in question for a consideration of Rs.5.91 crores; (xx) that the defendant no.2, being the Secretary of the defendant no.1, was not even authorised and empowered to cancel the offer of the plaintiff which had been accepted by the members of the Managing Committee of the defendant no.1; (xxi) that the defendant no.1 did not perform its part of the agreement despite legal notice dated 26th March, 2004 got issued by the plaintiff; and, (xxii) the plaintiff also got sent a notice to the Registrar Co-operative Societies but to no avail.

2. The suit was entertained and summons thereof issued though no *ex parte* stay sought granted. Vide order dated 29th November, 2004, it was ordered that in case the defendant no.1 intended to dispose of the plot, it will inform the Court.

3. The defendant no.1 contested the suit by filing a written statement pleading that (i) the suit was barred by Section 90 of the Delhi Co-operative Societies Act, 1972 for non-issuance of the statutory 90 days notice; (ii) the plaintiff and her husband owned residential properties in Punjabi Bagh and in West Punjabi Bagh and were not entitled to purchase any other residential plot and / or to become a member of any Co-operative Society in Delhi, as laid down in Rule 25 (1) (c) (i) of the Delhi Co-operative Societies Rules, 1973;

(iii) that the defendant no.2 is neither a necessary nor a proper party to the suit; the defendant no.2 was an employee / paid secretary of defendant no.1 and had on 3rd October, 2004 resigned from the employment of the defendant no.1 and had joined the services of the husband of the plaintiff and Sh. Mohan Lal Gupta, Estate Agent; (iv) no concluded contract had come into existence between the parties; (v) that the cheque submitted by the plaintiff for Rs.10,00,000/- was never encashed by the defendant no.1 and the plaintiff was called upon to collect the same; (vi) the plaintiff has concealed the contents of the advertisement published by the defendant no.1 inviting offers for the plot; (vii) that the offer dated 16th June, 2003 of the plaintiff was not in response to the advertisement but as a consequence of verbal discussion with the President of the Society; (viii) that the land of the Co-operative Housing Society cannot be sold by such verbal discussion; (ix) that the very foundation of the offer made by Sh. Mohan Lal Gupta was outside the Resolution passed by the SGM of defendant no.1 and therefore illegal and void *ab initio*; (x) that the defendant no.1 was registered on 14th June, 1950 under the provisions of the Bombay Act VII of 1925 as extended to Delhi and had the requisite membership as required under the said Act; (xi) denying that the then existing bye-laws adopted by the defendant no.1 at the time of its registration were contrary to the now existing bye-laws of the defendant no.1 or that the then existing bye-laws are not applicable to the defendant no.1; (xii) that as per the then existing bye-laws, the reference to the Act was to the Delhi Co-operative Societies Act, 1972 and the reference to the Rules was to the Delhi Co-operative Societies

Rules, 1973 and bye-law 63 of the then existing bye-law provided that all matters not specifically provided for were to be decided in accordance with the Co-operative Societies Act and the Rules Framed thereunder; (xiii) that Section 92 of the Delhi Co-operative Societies Act also provides that every society, whether existing or under the Bombay Co-operative Societies Act, shall be deemed to be registered under the corresponding provisions of the Delhi Co-operative Societies Act and with its bye-laws, so far as the same were not inconsistent with the express provisions of the Act shall continue to be in force until altered or rescinded; (xiv) that the defendant no.1 had already submitted before this Court its bye-laws as then existing; (xv) denying that under the Delhi Co-operative Societies Act, land is to be only allotted on leasehold basis or that the society can grant only sub-lease hold rights; (xvi) that the disposal of property of the defendant no.1 can only be in accordance with Sections 15, 28 and 52 of the 1972 Act; (xvii) that no residential plot had ever been sold by defendant no.1 to any of its members nor can it be so allotted/sold if such person is a member of any another house/building/society or if he / his wife / husband or any of his / her dependents owns a plot or a dwelling house in Delhi; (xviii) that the defendant no.1 had never sold plots, reference of which was given in the plaint; (xix) that a piece of land measuring 579 acres was acquired by the Commissioner of Delhi in the year 1950 to rehabilitate displaced persons who migrated from Pakistan; the plaintiff is neither a displaced person nor has migrated from Pakistan; (xx) that bye-law 5(i)(e) of the defendant no.1 makes eligible only such person who or whose spouse or any of whose

dependents do not own a plot or dwelling house in Delhi for membership of the defendant no.1; (xxi) that the advertisement of the defendant no.1 had invited offers for residential plot measuring 2072 sq. yds. / 1733 sq. metres without mentioning the plot number or the road number and in the colony of West Punjabi Bagh and not in the colony of East Punjabi Bagh as alleged by the plaintiff; (xxii) the plaintiff did not submit her offer by the stipulated date and did not submit the fee to accompany the offer; (xxiii) moreover the offer referred to by the plaintiff was of one Mohan Lal Gupta and not of the plaintiff; (xxiv) because the offer was not accepted, the cheque was not encashed; (xxv) the letter dated 22nd July, 2003 did not constitute acceptance of the offer and did not bring about any concluded contract; (xxvi) clearance from the Registrar Co-operative Societies was not to be obtained by the defendant no.1 and defendant no.1 had not made any representation to plaintiff; (xxvii) that the mandatory ingredients for specific performance do not exist in the alleged agreement; neither of the letters dated 16th June, 2003 or 22nd July, 2003 is to or by the plaintiff; no time limit was prescribed for payment of balance amount; there was no recital in regard to the consequences of default; there was no certainty as to the other terms relating to costs of conveyance; there was no consideration for the alleged agreement; (xxviii) the Registrar of Co-operative Societies, Government of NCT of Delhi vide its letter dated 10th July, 2003 raised certain questions with respect to the advertisement issued by the defendant no.1; and, (xxix) denying that defendant no.1 had accepted any earnest money from Sanjay Jain; the said money was accepted with specific condition

that Sh. Sanjay Jain will get any clearance from Registrar, Co-operative Societies for allotment of plot No.50, Road No.78, ad-measuring 1733 sq. mtrs., East Punjabi Bagh, New Delhi within a period of two months; however Sh. Sanjay Jain failed to obtain necessary approval and the sum of Rs.50 lacs had already been funded to him.

4. The plaintiff filed a replication denying owning properties in Punjabi Bagh as pleaded by the defendant no.1.

5. On the pleading of the parties, the following issues were framed on 12th August, 2008:-

- “1. Whether the plaintiff is entitled to specific performance of agreements dated 16.6.2003 and 22.7.2003, as prayed for in prayer (a) of the plaint? OPP*
- 2. In the alternative, whether the plaintiff is entitled to a decree of Rs.4.50 crores against the defendants for breach of contract? OPP*
- 3. Whether the plaintiff was ready and willing to perform his obligations under the two alleged agreements to sell? OPP*
- 4. Whether there is no concluded contract between the plaintiff and the defendant No.1? OPD*
- 5. Whether the plaintiff is debarred from claiming membership of the defendant No.1 society under the provisions of Bye-Law 5(1)(e) of the Bye-Laws of the defendant No.1 read with Rule 25(1)(c)(i) of the Delhi Cooperative Societies Rules 1973? OPD*

6. *Whether the defendant No.1 has not received token money of Rs.10.00 lacs from the plaintiff and, if so, effect thereof? OPD*
7. *Whether the suit is barred under the provision of Section 90 of the Cooperative Societies Act, 1972? OPD*
8. *Whether the suit suffers from mis-joinder/non-joinder of parties? OPD*
9. *Relief.”*

6. Vide order, also of 12th August, 2008, the interim order dated 29th November, 2004 was made absolute till the decision of the suit.

7. The plaintiff, in her evidence examined her husband Naresh Aggarwal as PW1. The plaintiff, despite repeated opportunity, failed to examine any other witness and vide order dated 14th September, 2016, observing that “a plaintiff in a suit for specific performance cannot continue with recording of evidence for eight years as has been done” and that “that alone speaks volumes of the readiness and willingness of the plaintiff”, the evidence of the plaintiff was closed.

8. The defendant no.1, in its evidence examined Sushil Kumar Gupta, Member of the Managing Committee of the defendant no.1 and who was cross-examined by the counsel for the plaintiff and closed its evidence.

9. The senior counsel for the defendant no.1 was heard on 20th December, 2016, when granting liberty to the plaintiff to, if so desires, file written arguments, judgment was reserved.

10. The counsel for the plaintiff, on 10th January, 2017, was permitted to address oral arguments as well and during which it was enquired from the counsel for the plaintiff as to how there could be an estoppel against the law and whether a Co-operative Housing Society was entitled to sell part of its land.

11. The counsel for the plaintiff as well as the counsel for the defendant no.1 have submitted their written arguments and which have been perused by me.

12. Shri Naresh Aggarwal, appearing as attorney of the plaintiff, in his affidavit (Ex-PW1/A) by way of examination-in-chief has deposed (i) that it was the plaintiff who was dealing and negotiating with the defendant no.1 through Mohan Lal Gupta who was acting as the agent of the plaintiff; (ii) that at the contemporaneous time, none for the defendant no.1 informed the plaintiff of the requirement for obtaining permission from the office of the Registrar of Co-operative Societies; and, (iii) that the plaintiff was always ready and willing. In cross-examination, he, while admitting ownership of the plaintiff / her husband of residential houses in East Punjabi Bagh and West Punjabi Bagh, deposed that the said houses were not by way of allotment but by way of purchase on re-sale.

13. Shri Sushil Kumar Gupta, Member of the Managing Committee of the defendant no.1 in his examination-in-chief *inter alia* deposed that neither the plaintiff nor her husband nor Mohan Lal Gupta have visited the office of the defendant no.1 and thus there was no occasion for the defendant no.1 to mete out any assurances to the plaintiff.

14. Though the plaintiff filed affidavit by way of examination-in-chief of Mohan Lal Gupta but inspite of repeated opportunities failed to produce him as a witness.

15. I now proceed issue-wise.

16. It is deemed appropriate to first take up issue no.4.

“Whether there is no concluded contract between the plaintiff and the defendant no.1? OPD”

17. The public advertisement in response whereto the plaintiff claims to have made the offer, proved as Ex-D1, is as under:-



18. The letter dated 16th June, 2003 of Mohan Lal Gupta to the President of the defendant no.1 proved as Ex-D2 is as under:-

“To,

The President

The Punjabi Bagh Cooperative Housing Society Ltd.

East Punjabi Bagh, New Delhi-110026

*FOR KIND ATTENTION MR. S.K. SACHDEVA
REG: Plot No.50/78, Punjabi Bagh, New Delhi.*

Dear Sir,

With reference to our verbal discussion with yourself, we have been able to arrange a buyer for the above mentioned Plot. Our offer is Rs.4.50 Crore (Rupees Four Crores Fifty Lakhs Only) and our service charges will be 2%. We are enclosing a cheque, under No.884891, drawn on State Bank Bikaner & Jaipur for Rs. Ten Lakhs, as token money subject to your approval.

Awaiting your confirmation.

Thanking you.

Yours faithfully,

Sd.

16/6/03

(MOHAN LAL GUPTA)”

19. The letter dated 22nd July, 2003 of the defendant no.1, proved as Ex-D4, is as under:-

*“Shri Mohan Lal Gupta
1/13, Punjabi Bagh,
NEW DELHI – 110026*

Dear Sir,

With reference to your letter dt. 16.06.2003 giving an offer for Plot No.50/78. The Members of the Managing Committee in the meeting held on 22.07.2003 were pleased to approve your offer of Rs.4.50 Crores (Rupees Four Crores & Fifty Lakhs Only) except service charges for which our

President was authorized to negotiate with you. We have to bring to your kind notice that there is little hitch for getting clearance from Office of the Registrar Coop. Societies. Received token money of Rs. Ten Lakhs vide Cheque No.884891, drawn on State Bank of Bikaner & Jaipur on behalf of Mrs. Usha Aggarwal, resident of 15/17, East Punjabi Bagh.

I have to inform you that in case there is some reservation from Registrar's Office, we will not be able to enter into this deal with no fault of ours and your token money of Rs.10 Lakhs will be returned.

Thanking you,

Yours faithfully,

FOR THE PUNJABI BAGH COOP. HOUSING SOCIETY LTD.

Sd/-

*(ANAND VERMA)
SECRETARY"*

20. The letter dated 27th September, 2003 of the defendant CHS, proved as Ex-D5, is as under:-

*"Shri Mohan Lal Gupta
1/13, Punjabi Bagh,
NEW DELHI – 110026*

*Reg: Your Offer for purchase of Plot No.50,
Road No.78, Punjabi Bagh, New
Delhi.*

Dear Sir,

We have to remind you that since you have failed to procure the clearance from Registrar Coop. Societies, Delhi, your offer stands cancelled, this may please be noted. The cheque can be collected

*from Secretary's Office on any working day except
FRIDAY, between 10.00 A.M. to 5.00 P.M.*

Thanking you,

*Yours truly,
For The Punjabi Bagh Coop. Housing Society Ltd.
Sd/-
(ANAND VERMA)
SECRETARY"*

21. In view of the aforesaid admitted documentary evidence, need to refer to any oral evidence is not felt. Moreover, the husband of the plaintiff appearing as the sole witness on behalf of the plaintiff also in his evidence did not claim that the plaintiff or he himself had dealt with the defendant no.1 or its officials and maintained that the alleged Agreement to have been entered into on behalf of the plaintiff by Sh. Mohan Lal Gupta as agent of the plaintiff.

22. Per Section 2(a) of the Contract Act, 1872, when one person signifies to another his willingness to do anything with a view to obtaining the assent of that other to such act, he is said to make a proposal. Section 2(b) provides that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted and a proposal when accepted becomes a promise. Section 2(e) provides that every promise and every set of promises, forming the consideration for each other, is an agreement. Section 2(h) provides that an agreement enforceable by law is a contract.

23. No merit is found in the contention of the counsel for the defendant no.1 of there being no concluded contract between the

parties for the reason of the contract if any being between defendant no.1 and Mohan Lal Gupta. Though undoubtedly the letter dated 16th June, 2003 to the defendant no.1 was written by Mohan Lal Gupta but it was clearly mentioned therein that the said Mohan Lal Gupta had been 'able to arrange a buyer'. It was thus clear that the letter dated 16th June, 2003 was not of Mohan Lal Gupta in his personal individual capacity but on behalf of the buyer arranged by him, though undoubtedly the said buyer in the said letter was not disclosed to be the plaintiff. Similarly, undoubtedly the letter dated 22nd July, 2003 aforesaid of the defendant no.1 was addressed to Mohan Lal Gupta but again, from the language thereof it is evident that the defendant no.1 was aware of the plaintiff being a buyer arranged by Mohan Lal Gupta as the name of the plaintiff is mentioned in the said letter. Thus, the transaction contained in the said two correspondence aforesaid whatsoever its nature may be, was undoubtedly between the plaintiff and the defendant no.1 and not between Mohan Lal Gupta and the defendant no.1.

24. The plaintiff has pleaded and the counsel for the plaintiff during the hearing did not controvert that the letter dated 16th June, 2003 of the plaintiff was a proposal within the meaning of Section 2(a) of the Contract Act. The counsel for the defendant no.1 has not controverted that the response dated 22nd July, 2003 of the defendant no.1 was to the proposal contained in the letter dated 16th June, 2003. What needs to be determined is, whether the letter dated 22nd July, 2003 constitutes an acceptance of the proposal within the meaning of Section 2(b) of the Contract Act so as to constitute a promise.

25. Though at the time of hearing it had appeared that the letter dated 22nd July, 2003 was of acceptance of the proposal contained in the letter dated 16th June, 2003 and a concluded contract had come into existence between the parties, though a contingent one and it was so informed to the counsels also and their comments thereon elicited but on further consideration I find Section 7 of the Contract Act to be as under:-

“7. Acceptance must be absolute.—In order to convert a proposal into a promise, the acceptance must— (1) be absolute and unqualified; (2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.”

(emphasis added)

26. I have wondered, whether notwithstanding the defendant no.1 in the letter dated 22nd July, 2003 having unequivocally informed Mohan Lal Gupta as agent of the plaintiff that the Managing Committee of the defendant no.1 has approved the proposal contained in the letter dated 16th June, 2003 the acceptance was not absolute and unqualified for the reason of (i) the said acceptance being with the exception of service charges for which the President of the defendant no.1 was informed to have been authorized to negotiate with Mohan Lal Gupta; or, (ii) for the reason of the agent of the plaintiff also being

informed “that there is a little hitch for getting clearance from the office of the Registrar Co-operative Societies”; or, (iii) for the reason of the agent of the plaintiff also being informed that “in case there is some reservation from the Registrar’s office” the defendant no.1 would not be able to enter into the deal.

27. Neither of the counsels have addressed on the said aspect nor covered the same in their written arguments.

28. As far as the first of the aforesaid reasons is concerned, though the agent of the plaintiff in his letter dated 16th June, 2003 had also proposed that his service charges will be 2% and the defendant no. 1 in its letter dated 22nd July, 2003 did not convey acceptance of the said proposal and instead conveyed that it has authorized its President to negotiate with the agent of the plaintiff but it is not the plea of the defendant no.1 that no agreement could be reached on the said aspect or that no contract came into existence for the said reason. Thus it is not as if for the reason of non-acceptance of the proposal qua service charges, that the agreement can be said to have not come into existence.

29. As far as the other two grounds noted in para 26 hereinabove are concerned, before determining whether the same prevented the letter dated 22nd July, 2003 from being called absolute and unqualified, it is deemed appropriate to notice the law as is evolved on the said aspect.

30. Supreme Court, in *Mayawanti Vs. Kaushalya Devi* (1990) 3 SCC 1, has held (i) that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable

contract; where a valid and enforceable contract has not been made, the Court will not make a contract for the parties; it is therefore necessary first to see whether there has been a valid and enforceable contract and then to see the nature and obligation arising out of it; it is settled law that if a contract is to be made, the intention of the offeree to accept the offer must be expressed without leaving room for doubt as to the fact of acceptance or to the coincidence of the terms of acceptance with those of the offer; (ii) the rule is that the acceptance must be absolute and must correspond with the terms of the offer; if the two minds were not *ad idem* in respect of the property to be sold, there cannot be said to have been a contract for specific performance; if the parties themselves were not *ad idem* the Court cannot order specific performance; (iii) specific performance of a contract is the actual execution of the contract according to its stipulations and terms and the Courts direct the party in default to do the very thing which he contracted to do; the stipulations and terms of the contract have therefore to be certain and the parties must have been consensus *ad idem*; if the stipulations and terms are uncertain and the parties are not *ad idem*, there can be no specific performance for there was no contract at all; and, (iv) Section 9 of the Specific Relief Act says that except as otherwise provided in that Act, where any relief is claimed under Chapter II of the Act in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts; the defence of there having not been a contract for lack of consensus *ad idem* is thus available to the defendant.

31. Supreme Court in *Nathulal Vs. Phoolchand* 1969 (3) SCC 120, held that where by statute, property is not transferable without the permission of the authority, an agreement to transfer the property must be deemed to be subject to the implied condition that the transferor will obtain the sanction of the authority concerned.

32. The Division Bench of this Court in *Eldee Velvet & Silk Mills Pvt. Ltd. Vs. Anant Ram Whig* ILR (1971) II Delhi 249 held that so far as the seller and the buyer are concerned, once an agreement for sale is completed, the fact that the Sale Deed is to be executed after permission is granted by the Government for the transfer does not render the contract any the less a complete contract and if the buyer is otherwise entitled to specific performance of the agreement, he could not be refused specific performance on the ground that the permission of the Government had yet to be obtained.

33. Though from the law as aforesaid enunciated by the Supreme Court and by the Division Bench of this Court it appears the mere fact of the permission being required from the office of the Registrar of Co-operative Societies would not lead to the situation of the acceptance vide letter dated 22nd July, 2003 being not absolute and unqualified, but there is a peculiar fact in the present case. The agent of the plaintiff, in the proposal contained in the letter dated 16th June, 2003, did not mention about the defendant no.1 being required to obtain any permission from the Registrar of Co-operative Societies. The defendant no.1, in its letter dated 22nd July, 2003 for the first time mentioned about the hitch of getting clearance from the office of Registrar of Co-operative Societies and of the consequences of the

said office not granting the permission. There is no plea of the plaintiff, of the plaintiff or her agent having agreed to the aforesaid new term introduced by the defendant no.1 in its letter dated 22nd July, 2003; rather it is the plea of the plaintiff in the plaint that no permission was infact required. However the plaintiff did not send any response to the letter dated 22nd July, 2003 aforesaid contending so and have said so for the first time in the plaint in this suit and the counsel for the plaintiff during the hearing also has insisted that no permission is required. The situation which emerges as per the said stand of the plaintiff is, that the defendant no.1 without any need for obtaining permission/clearance from the office of the Registrar of Co-operative Societies for sale of the plot aforesaid to the plaintiff, in the letter dated 22nd July, 2003 stated so. Not only so, the defendant no.1 in the said letter nowhere stated that it would be applying for or would obtain such permission. It is also not the stand of the plaintiff that the defendant no.1, after the letter dated 22nd July, 2003, applied for any such permission. The question which thus arises is that when a letter in response to a proposal, though purporting to accept a proposal, informs the person making the proposal of certain permissions/clearance required which according to the person making the proposal are otherwise not required in law, whether it can be said that the acceptance is absolute and unqualified. In my view, no. The very fact that the person to whom the proposal is made, though purporting to accept the proposal is informing the person making the proposal of the difficulty and does not agree to overcome the said difficulty and which difficulty according to the person making the

proposal did not exist, it is clear as daylight that there is no absolute and unqualified intent to accept the proposal.

34. As aforesaid, I had during the hearing observed that though a contract had come into existence but the same was a contingent one. Chapter-III of the Contract Act titled "Of Contingent Contracts" in Sections 31 and 32 thereof provide as under:-

31. "Contingent contract" defined.—A "*contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.*"

Illustration

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

32. Enforcement of contracts contingent on an event happening.—*Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.*

35. The question of a contract being contingent would arise only if first there is a contract. Existence of the contract as aforesaid requires the consensus *ad idem* or a meeting of the minds and which meeting of the minds has been found to be missing in the correspondence between the agent of the plaintiff and the defendants. Thus, the question of the contract being contingent would not arise.

36. I thus decide issue no.4 aforesaid against the plaintiff and in favour of the defendants and hold that there is no concluded contract between the plaintiff and the defendant no.1.

37. Though in the light of above, the plaintiff is not entitled to any relief and the suit is liable to be dismissed but for the sake of completeness all the other issues have to be decided.

38. It is deemed appropriate to next take up issue no.5 as under:-

“5. Whether the plaintiff is debarred from claiming membership of the defendant No.1 society under the provisions of Bye-Law 5(1)(e) of the Bye-Laws of the defendant No.1 read with Rule 25(1)(c)(i) of the Delhi Cooperative Societies Rules 1973? OPD”

39. According to the defendant no.1, the plaintiff was / is not qualified to purchase the plot aforesaid owing to Bye-Law 5(i)(e) of the defendant no.1 which makes ineligible a person who or whose spouse or whose dependants own a plot or dwelling house in Delhi from becoming a member of the defendant no.1 and thus from acquiring any plot aforesaid from the defendant no.1. Though the plaintiff in replication denied ownership of other properties, but the husband of plaintiff in his cross-examination admitted the same. Though the said Bye-Laws have not been proved but the plaintiff otherwise has admitted the same and has contended that the same do not come in the way of the plaintiff because the defendant no.1 was incorporated under the Bombay Co-operative Societies Act, 2005. Though it is also suggested that the earlier Bye-Laws of the defendant no.1 did not contain any such restriction but the plaintiff in the plaint itself has admitted to be not in possession thereof and the said Bye-Laws have otherwise not been proved. The plaintiff has also given detailed

reasons in the plaint as recorded above, for the said Bye-Law to not come in the way of the plaintiff. The counsel for the plaintiff has relied on *Navjivan Cooperative House-Building Society Ltd. Vs. Delhi Cooperative Tribunal* ILR (1987) II Delhi 323 but it is found to be of no relevance to the controversy at hand.

40. However admittedly the Bye-Laws of the defendant no.1 even if originally not containing any such restrictions as now contained in Bye-Law 5(i)(e), were amended long prior to the letters dated 16th June, 2003 and 22nd July, 2003 of which specific performance is claimed and the Bye-Laws in force on the date of the said letters contained such restriction. The plaintiff has also not sought any relief of quashing of the Bye-Law 5(i)(e) and which relief could not have been claimed in the absence of the Registrar Co-operative Societies and /or the Government of NCT of Delhi. The plaintiff, as a prospective purchaser, cannot in my view while seeking the relief of specific performance of Agreement of Sale be permitted to urge invalidity of the Bye-Law of the defendant no.1. Thus, though the defendant no.1 in its written statement has controverted the said pleas of the plaintiff but the need to adjudicate the same is not felt. As per the Bye-Laws existing on the date when the plaintiff claims an Agreement to Sell, the plaintiff was ineligible to become a member of the defendant no.1 and the defendant no.1 cannot be directed by a decree of specific performance from selling to the plaintiff in contravention of its own Bye-Laws.

41. Thus Issue no.5 is decided against the plaintiff and in favour of the defendant no.1.

42. I next take up issues no.1,2,3,6&7 together.

“1. Whether the plaintiff is entitled to specific performance of agreements dated 16.6.2003 and 22.7.2003, as prayed for in prayer (a) of the plaint? OPP

2. In the alternative, whether the plaintiff is entitled to a decree of Rs.4.50 crores against the defendants for breach of contract? OPP

3. Whether the plaintiff was ready and willing to perform his obligations under the two alleged agreements to sell? OPP

6. Whether the defendant No.1 has not received token money of Rs.10.00 lacs from the plaintiff and, if so, effect thereof? OPD

7. Whether the suit is barred under the provision of Section 90 of the Cooperative Societies Act, 1972? OPD

43. Since Issues no.4&5 have been decided against the plaintiff, the question of the plaintiff being entitled to the reliefs of specific performance and damages does not arise and there is no need to determine whether the plaintiff was ready and willing.

44. Thus Issues no.1,2&3 are thus decided against the plaintiff and in favour of the defendant no.1.

45. As far as Issue no.6 is concerned, though the said issue has been framed but in fact there was no need therefor. It is nobody's case that the cheque enclosed to the letter dated 16th June, 2003 was encashed. In fact the said cheque has been filed by the defendant no.1 before this

Court and in original is on the record of this Court. The defendant no.1 vide its letter dated 22nd July, 2003 had asked the plaintiff to take back the said cheque.

46. Thus Issue no.6 is decided by holding that though the plaintiff had tendered the cheque for Rs.10,00,000/- to the defendant no.1 and the said cheque was received by the defendant no.1 from the plaintiff but the defendant no.1 did not encash the same.

47. That brings me to Issue no.7 with respect to the bar of the provisions of Section 90 of the Delhi Co-operative Societies Act, 1972.

48. I may mention that the present suit was instituted on 26th May, 2004 and by which date the Delhi Co-operative Societies Act, 1972 stood superseded by the Delhi Co-operative Societies Act, 2003 w.e.f. 1st April, 2004. Section 90 of the 1972 Act prohibited institution of suit against a Co-operative Society or its officers in respect of any act touching the business of the Society until the expiration of three months next after notice in writing has been delivered to the Registrar or left at the office stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and required the plaint to contain a statement that such a notice had been so delivered or left. Section 129 of the 2003 Act is to the same effect.

49. I am of the view that now since the present suit has been pending for the last over 14 years and has been fought on merits, the said question has become irrelevant. Accordingly Issue no.7 is

decided in favour of the plaintiff and against the defendant no.1 by holding the suit to be not so barred.

50. The only issue remaining is Issue no.8 as under:-

“8. *Whether the suit suffers from mis-joinder/non-joinder of parties? OPD*”

51. The defendant no.2 was indeed not found to be a necessary party to the present suit and the name of the defendant no.2 is ordered to be deleted from array of defendants. It cannot be said that the suit is bad for non-joinder of Mohan Lal Gupta inasmuch as it stands established that he was merely acting as the agent of the plaintiff. The suit thus cannot be said to be bad for non-joinder of the said Mohan Lal Gupta.

52. Issue no.8 is thus decided in favour of the plaintiff and against the defendant no.1

53. Resultantly the suit fails and is dismissed.

54. In the facts and circumstances aforesaid and having gone through the proceedings in the suit, it is not deemed appropriate to burden the plaintiff with costs of the suit incurred by the defendant no.1 because the dispute raised is found to be otherwise *bona fide*.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MAY 09, 2018

‘pp/gsr’..