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

\+ W.P.(C) 9802/2018 & C.M. No. 38198/2018

ALKA BHATIA ..... Petitioner

Through: Mr. Bharat Bhushan Bhatia with Mr.Rajesh Bhatia, Mr. Ankit Bhatia, Advocates.

versus

NEEL KAMAL COOPERATIVE GROUP HOUSING SOCIETY & ORS ..... Respondent

Through: Mr. Santosh Kr. Tripathi, ASC with Mr. Shashank S. Tiwari and Mr. Rishabh Ostwal, Advs.
Mr. S.K. Kaushik, Adv. for DCHFC
Mr. Rajiv Vig, Adv. for R-1 Society.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **18.12.2018**

The petitioner has preferred the present writ petition to seek the quashing of the notice dated 20.08.2018 issued by the Assistant Collector GR-1 calling upon the petitioner to make payment of Rs.1,27,499/- along with interest. It appears that the Delhi Co-operative Housing Finance Corporation Ltd. (DCHFC) had provided a loan to the Neel Kamal Cooperative Group Housing Society Ltd. to enable the raising of construction of the residential flats of the members. The said loan was availed of by the different members of the society as per their need. Since the DCHFC was not repaid, its claim was adjudicated in Arbitration and an award was passed in favour of DCHFC and against the Society and its members. However, in those proceedings the individual liability of each of the members who had availed of the loan facility was not determined. Subsequently, the said co-operative society, on the basis of its records sought to determine the liability of the loanee members and, consequently, the impugned notice dated 22.08.2018 was issued to the petitioner.

The submission of learned counsel for the petitioner is that the petitioner was issued a no due certificate on 12.05.1996 by the then President of the co-operative society. Learned counsel for Respondent No.1 society as well as learned counsel for respondent No.3 DCHFC submit that the mere issuance of the no due certificate by the then President would not absolve the petitioner of his liability which is evident from the books of accounts of the society. There can be no quarrel with this proposition.

Learned counsel for the respondents submit that the purpose of issuance of the impugned notice dated 22.08.2018 by the Assistant Collector GR-1 is to enable the petitioner to appear before the said authority to satisfy the authority with regard to the payments made by the petitioner against the loan obtained from the society for raising construction of the flat.

It is also pointed out that the petitioner would also have a remedy under Section 116 of the Delhi Co-operative Society Act in respect of any order that the Assistant Collector may eventually pass, and the issues raised by the petitioner cannot be raised before this Court as they involve determination of disputed questions of fact.

We agree with the above submissions of Ld. Counsels for the respondents. In view of the aforesaid, we dispose of this petition, while leaving it open to the petitioner to either assail the impugned notice dated

22.08.2018 in accordance with law, or to appear before the Assistant Collector GR-1 and to explain as to how there is no outstanding liability in respect of the loan availed of by the petitioner, if any. In case, the petitioner chooses to appear before the Assistant Collector GR-1, the Assistant Collector shall examine the records of the society as well as the records / documents produced by the petitioner to determine the liability of the petitioner, if any.

No coercive steps shall be taken by the respondents against the petitioner to recover the amount mentioned in the impugned notice, provided the petitioner either invokes her statutory remedy and obtains interim orders within the next four weeks, or submits herself to the jurisdiction of the Assistant Collector for determination of her liability, if any.

The petitioner shall, however, not encumber or transfer her flat in the meanwhile till the matter attains finality.

We make it clear that we not expressed any views on the merits of the case.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

A. K. CHAWLA, J

DECEMBER 18, 2018

N.Khanna