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

\+ **WRIT PETITION (CIVIL) No. 9709/2015**

Date of decision: 27th July, 2018

ANIL KUMAR JAIN ..... Petitioner
Through Mr. Manhor Malik and Mr. Devashish, Advocates.

versus

SHIAM CGHS LIMITED. & ORS ..... Respondent
Through Mr. D.K. Bhati and Ms. Rashmi Bhati, Advocates for R-1.
Mr. Naushad Ahmed Khan, Additional Standing Counsel, GNCTD for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

C.M.No.29406/2018

This is an application by the petitioner for restoration of the writ petition, which was dismissed in default and for non-prosecution vide order dated 19th March, 2018.

It is stated that the law clerk of the counsel had inadvertently noted a wrong date of hearing. Reliance is placed upon photocopy of the court diary of the counsel, maintained by his clerk, as per which the next date of hearing was recorded as 19th July, 2018 instead of 19th March, 2018.

As there is delay in filing of the application for restoration, C.M. No.29407/2018 has been filed for condonation of delay of 93 days.

In view of the reasons given in the application, counsel for the non-applicants/respondents waives his right to file reply.

We have perused the original diary and find that the assertion made by the counsel is correct.

Accordingly, the applications for restoration and condonation of delay are allowed. Delay is condoned and the writ petition is restored for hearing on merits.

W.P. (C) No.9709/2015

With the consent for the counsel for the parties arguments have been heard.

2. Petitioner, Anil Kumar Jain, has prayed for quashing the order dated 16th April, 2015 passed by the Delhi Cooperative Tribunal (Tribunal, for short) in Appeal Nos.147/2012/DCT and 181/2012/DCT.

3. Shiam Cooperative Group Housing Society (Cooperative Society, for short) and Registrar of Cooperative Societies, are the respondent Nos.1 and 2 before us.

4. Petitioner submits that he was admitted and enrolled as a member of the Cooperative Society in 2003 and was accorded membership number 211. Petitioner had paid Rs.17,00,100/- to the Cooperative Society towards membership fee, cost of land and cost of flat as under:-

S. No.	Date of receiving	Cheque No./Cash	Land & Const. Money	Share Money
1	15-Jan-2003	CASH		100
2	31-Dec-2002	CASH		9900
3	31-Dec-2002	CASH	490,100	
4	28-Oct-2003	CASH	200,000	
5	29-Oct-2003	CASH	200,000	
6	3-Nov-2003	CASH	200,000	
7	7-Nove-2003	CASH	200,200	
8	20-May-2004	CASH	100,000	
9	13-Oct-2004	CASH	300,000	
			16,90,100	10,000

Aforesaid payments though in cash of Rs.17,00,100/- were duly recorded in the books of accounts of the Cooperative Society as accepted by the auditors in their certificate dated 12th February, 2011 and the letter dated 17th June, 2011 written by the Secretary of the Cooperative Society to the petitioner.

5. The petitioner claims having paid Rs.94,106/- by cheque to the Cooperative Society in January, 2010. However, as per records of the Cooperative Society the cheque was not credited. The petitioner had issued cheque of Rs.42,500/- dated 26th May, 2011, which was returned by the Cooperative Society stating that issue of share certificate/membership was still pending.

6. There are several good reasons and grounds why the plea and contention of the petitioner that he was enrolled as a member and had paid Rs.17,00,100/- in cash between December, 2002 till October,2003 should be rejected. The petitioner is not in possession of a share certificate issued by the Cooperative Society. He accepts that the share certificate was not issued. Payment of Rs.17,00,100/- which is disputed by the Cooperative Society as stated was entirely in cash. Further, the petitioner accepts that no receipts were issued. The

impugned order notices incongruity in the stand and contention of the petitioner that he had submitted an application for enrollment on 6th January, 2003 and the then managing committee had inducted him as a member on 15th January, 2003, though it is claimed that Rs.9,900/- and Rs.4,90,100/- were paid in cash on 31st December, 2002 i.e. even before moving an application for becoming a member of the Cooperative Society. Equally abnormal and incomprehensible is the complete silence and inaction of the petitioner from 2002/2003 till 17th January, 2010, which is the first written communication by the petitioner to the Cooperative Society.

7. Records of the Cooperative Society are a suspect and unreliable. Affairs of the Cooperative Society were investigated by the CBI and FIR No.RC/DAI/2006A 0053 was registered on 18th December, 2006. Charge sheet has been filed. Allegation is that the records of the Cooperative Society have been forged and fabricated. Interestingly, FIR records that resignation letters, applications for enrolment etc. were misplaced/lost in the year 2005, and a report was lodged by the then office bearers in this regard on 9th May, 2005 at Police Station, Malviya Nagar, New Delhi.

8. The impugned order of the Tribunal holds that the petitioner is not entitled to relief as he has not been able to satisfy and prove that he had made payment of Rs.17,00,100/- to the Cooperative Society. The Tribunal was rightly unconvinced and unable to accept the claim of the petitioner that he had paid a huge sum of Rs.17,00,100/- to the Cooperative Society within a short span of time without obtaining share certificate, receipt against membership fee and receipts for cash payments. Referring to the Letter dated 17th June, 2011, was observed that the said letter had to be read in the background of facts, since the office bearers had indulged in wrong doing.

9. To ascertain the petitioner's financial condition and creditworthiness during the relevant period, the petitioner was directed by the Court to furnish details of his income and financial status during the period 2003-04 to 2016-17. As per the affidavit, the petitioner is working an accountant in a private firm since 1986. His annual income in the financial years 2003-04 till 2005-06 was about Rs.50,000/- and less than Rs.1,00,000/- in financial years 2006-07 and 2007-08. The petitioner had applied for PAN card in 2009 and the same was issued on 9th December, 2009. The petitioner is assessed at

Bulandsahar, Uttar Pradesh. Cash payments of Rs.17,00,100/- it is claimed were from family savings and after taking money from his parents, wife's parents, friends and employers etc. Financial status etc. only confirm our view.

10. Accordingly, we do not see any reason and good ground to interfere with the impugned order passed by the Tribunal. Contention of the petitioner solely relying upon the entries in the books of accounts, which are clearly debatable and questionable would not show and prove that the petitioner had made cash payments of Rs.17,00,100/-. The reasoning given by the Tribunal to reject the said claim cannot be said to be illogical, perverse being contrary to facts and unreasonable.

11. The writ petition is dismissed with no order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

JULY 27th, 2018
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