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

\+ W.P.(C) 1684/2017 & CM APPL. 46407/2018

PARVEEN MAHAJAN & ORS ..... Petitioner

Through: Mr.Siddharth Dutta, Mr.Kumar Dushyant Singh and Mr.Devesh, Advs.

versus

THE REGISTRAR COOPERATIVE SOCIETIES, DELHI & ANR ..... Respondent

Through: Mr.S.K. Kaushik, Adv for R-No.2
Mr.Rajiv Vig, Adv. for respondent No.3
Mr.S.C. Singhal, Advocate for the applicants in CM APPL. 46407/2018

\+ **W.P.(C) 1704/2017**

DEVENDRA SHARMA & ORS ..... Petitioner

Through: Mr.Siddharth Dutta, Mr.Kumar Dushyant Singh and Mr.Devesh, Advs.

versus

THE REGISTRAR COOPERATIVE SOCIETIES, DELHI & ANR ..... Respondent

Through: Mr.S.K. Kaushik, Adv for R-No.2
Mr.Rajiv Vig, Adv. for respondent No.3

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% **25.03.2019**

1. These two writ petitions have been preferred by two sets of petitioners, claiming the same relief, namely, that respondent no.2 i.e. Delhi Cooperative Housing Finance Corporation Limited ('DCHFCL' for short) be directed to issue No Objection Certificate/ No Dues Certificates to the petitioners in respect of their respective flats in

Neel Kamal Cooperative Group Housing Society Limited.

2. The said cooperative society, in respect of certain identified members, obtained building construction loan from respondent no.2 to raise construction of the flats. So far as the petitioners in WP(C)1684/2017 are concerned, they never availed of any such loan. The petitioners in WP(C)1704/2017 availed of the said loan, but there is no dispute that they have re-paid the said loan in its entirety.

3. It appears that there is one set of members, who had not re-paid their share of loan and, consequently, the account of respondent no.2 has not been settled. Respondent no.2 evidently, issued notices for recovery against the petitioners in the present writ petitions. Those notices were challenged before this court by the present petitioners by preferring W.P.(C.)No.1454/2014 and WP(C)2363/2014. The petitioners in the present WP(C)1684/2017 had preferred the petition [WP(C)1454/2014], whereas the petitioners in the present WP(C)1704/2017 had preferred the petition [WP(C)2363/2014]. These writ petitions were allowed by this court on 07.05.2015 and the notices issued to the petitioners in the aforesaid two writ petitions were set aside and quashed.

4. The ratio of the said decision of this court was that respondent no.2 /DCHFCL could not claim any amount from those members of the aforesaid society, who had either not availed of the loan facility, or had, admittedly, repaid their share of the loan. This court also observed in the course of its decision that quantification of the amounts reflected in the defaulter members' list did not concern the court, since the court was only concerned with the rights and

liabilities of the petitioners before it. It was made clear that so far as the quantification of the amount by the respondent, society qua the members – who had availed of the loan facility and had not repaid the same, is concerned, the same is left for adjudication before the appropriate forum. Pertinently, the Special Leave Petitions [SLPNo.26019/2015 & SLP 25877/2015] preferred before the Supreme Court against the judgment dated 07.05.2015 were rejected on 24.09.2015.

5. The petitioners have again approached this court since, despite the pronouncement dated 7.5.2015 made by the Division Bench, they are once again faced with resistance on behalf of the respondent no.2, who is not willing to grant No Objection / No Dues Certificate, so that the petitioners could deal with their respective flats in the said society.

6. The submission of counsel for the petitioners is that the relief now sought in the present petition is a sequitur to the relief already granted by this court in the earlier round. Hence, the same cannot be denied. He points out that in the earlier round it was admitted by the respondent DCHFCL before this court that so far as the petitioners are concerned, they had either not taken any loan whatsoever, or even if they had taken the loan the same had been fully repaid to the extent of their respective shares. That being the position, it is for the DCHFCL to pursue its claim against the defaulter members and members, such as petitioners, cannot be made to suffer on account of the ongoing recovery process.

7. At this stage, we may observe that some of the members of the aforesaid society have preferred an application [C.M. No.46407/2018]

to seek impleadment in the writ petition [WP(C)1684/2017]. Mr.S.C. Singhal, advocate is representing the applicants.

8. Mr.Singhal, submits that so far as the claim of the petitioners is concerned, the applicants have no reason to oppose the same. He submits that the applicants are similarly situated, since they have repaid the entire loan qua them. This position is disputed by counsel for the respondent, society as well as DCHFCL.

9. In our view there is no need to implead the applicants in the present petition, since their rights are not being adjudicated by us in the present petition. The relief sought by the petitioners does not impinge upon the rights of the applicants, and the applicants have no cause of action against the petitioners herein. The application [C.M. No.46407/2018] is accordingly, rejected.

10. As already observed by this court in its earlier decision dated 7.5.2015, the issue whether a particular member is defaulter and, if so, to what extent, has to be determined in appropriate proceedings.

11. Counsel for the respondent / DHCFCL submits that when the loan was taken, the entire property / project of the society was mortgaged and therefore, the petitioners are not entitled to grant of No Dues / No Objections Certificates, until the entire loan is liquated. We cannot accept this position. The respondent / DHCFCL was represented and actively participated in the proceedings undertaken in W.P.(C.)No.1454/2014 and WP(C)2363/2014. It was the respondent DHCFCL, which admitted that so far as the writ petitioners in those two writ petitioners are concerned, they had either not availed of the loan, or were those members who had availed of, and fully repaid

their loan. The findings returned by this court binds the DHCFCL, since DHCFCL was a respondent / party to the proceedings. Therefore, DHCFCL cannot resile from the said findings and is bound to honour the same.

12. The relief sought by the petitioners is merely a sequitur to the relief already granted to them in the earlier round. The DHCFCL cannot have any claim against the petitioners, and cannot seek to effect recovery in respect of its outstanding dues from the flats of the petitioners. So far as the interest of DHCFCL is concerned, in our view the same is adequately protected, since dispute in relation to 17 members is still persisting. We may make it clear that we have not gone into the submission of any of those 17 members, as to whether or not they, or any of them, is a defaulter member. Whatever be the position the interest of the DHCFCL is adequately protected.

13. We, accordingly, allow these petitions and direct the DHCFCL to grant No Objection / No Due Certificate to each of the petitioners with respect to their flats, so that they could deal with them unhindered by the claim of the DHCFCL. The said No Objection / No Due Certificate shall be issued within six weeks from today.

VIPIN SANGHI, J

REKHA PALLI, J

MARCH 25, 2019 ssn