

Maitrayee Ghosh

-vs.-

Khanchay Sakal Cooperative Housing Society Ltd. & Ors.

Mr. Prabir Kr. Ghosh
Mr. Sunil Singhanian
Mr. Ranjan Laskar

... for the petitioner

Mr. Pradip Kr. Roy
Mr. Shraboni Sarkar

... for the State

Mr. Subrata Kumar Basu
Mr. Soumen Bhattacharya

... respondent No. 1, 2 & 3

The writ petitioner challenges an order passed by the West Bengal Cooperative Tribunal dated 13.12.2019 in Appeal No. 14/2019.

The brief facts of the case are that the petitioner paid on 31.12.2014; 09.04.2015 and 03.03.2015 by three A/c. Payee cheques, a total sum of Rs. 3 lacs to the respondent Housing Society.

The said sum of money came to be credited into the account of the Society. Although an application for membership dated 18.12.2014 was disclosed in evidence before the arbitrator, there is no proof or evidence on record to show that the same was received by the Society. The 60-day benefit of automatic membership under Section 64 of the W.B.C.S. Act, 2006 has therefore been rightly found inapplicable to the petitioner by the Arbitrator as well as the Tribunal.

A large number of decisions were cited before

the Cooperative Tribunal which have duly been considered. The Tribunal went on to hold in respect of Rs. 3 lacs paid by the petitioner that there is no evidence to show any formal receipt issued by the Society accounting for such sum of money. None whatsoever has been produced before the arbitrator. The said sum of money could not have been towards any residential unit in the Society as rightly held by the Tribunal.

The delay in approaching the Arbitrator was also addressed both by the Arbitrator Tribunal as well as the Cooperative Tribunal. The delay has been held as inordinate and unexplained.

The learned counsel appearing on behalf of the petitioner would vehemently submit before this court by producing a copy of the by-laws of the Society which he claims to have received, that no money can be accepted by the Society from any non-member. He, therefore, submits that having accepted the money paid by the petitioner, there is a deemed membership created.

This court finds the argument preposterous. Anybody can deposit money into another's bank account and, particularly, that of an Association or a juristic person. The mere deposit, therefore, cannot create any equity or right in favour of the petitioner.

Admittedly, there is record that the petitioner was familiar and friendly with the original promoter, one Nirmalya Ghosh. The proximity with such promoter may have been used by the petitioner to steal a march over

other members to create any illusion of right in his favour as has been rightly inferred by the Arbitrator and Tribunal below.

The decision of the Hon'ble Supreme Court reported in AIR 2015 Supreme Court 489 [Rajkot Distt. Cooperative Bank Ltd. vs. State of Gujarat] cited by the petitioner wherein in para 22, it is held that the by-laws and rules of a Society are at par with statutes can have no manner of application in the instant case.

This court finds no procedural infirmity or violation of principles of natural justice either canvassed in the writ application or evident from the proceedings annexed to the writ petition both before the Arbitrator Tribunal and the Cooperative Tribunal.

The impugned orders, therefore, do not call for any interference.

In so far as the refund of the said sum of Rs. 3 lacs ordered by the Arbitrator and the Tribunal, it is submitted by the Society that the refund has been made to the petitioner and the sum has been refused.

With the above observations, the instant writ application stands **dismissed** in limine, however, without any order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Rajasekhar Mantha, J.)