

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

+ **RSA 203/2018 & CM APPL. 51770/2018**

Judgment reserved on : 10.12.2018

Date of decision: 04.08.2021

PUNIT BERIWALA

..... Appellant

Through: Mr.Jagdeep Anand, Advocate.

versus

DEEPAK KAPOOR & ORS

..... Respondents

Through: Mr.Joy Deep Sharma, Advocate.
For R-1 for the caveator.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The present regular second appeal has been filed by the appellant herein i.e. Shri Punit Beriwalla who was arrayed as the defendant no.3 in Suit No.17/2016 before the learned Civil Judge in a suit filed by the plaintiffs thereof, Raj Kumar Kapoor and others against the Sarvapriya Cooperative House Building Society Ltd. arrayed as the defendant no.1 with the DDA arrayed as the defendant no.2 and the plaintiff nos. 1 to 5 namely Shri Raj Kumar Kapoor, Shri Maharaj Kumar Kapoor, Shri Sanjay Kapoor, Shri Subhash Chopra Through Attorney Shri Sukhdev Raj Vohra, Shrimati Shakuntla

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Bhandari and defendant nos. 4 to 8 namely Shri Ram Kumar Kapoor, Shri Krishna Kumar Kapoor, Shrimati Vimal Kapoor, Miss Pranav Kapoor, Shrimati Rashmi Nagrath being the legal heirs of late Shrimati Dhan Devi Kapoor, a member of defendant no.1 i.e. the Sarvapriya Cooperative House Building Society Ltd. who had been allotted a plot No.10/11 measuring 290 square yards in the land leased out to her by the defendant no.2 i.e. the Delhi Development Authority (DDA), Cooperative Societies Cell Vikas Sadan, I.N.A Market, New Delhi for which she had paid through her lifetime the full consideration of Rs.19,497 at the rate of Rs.65 per square yards i.e. at the rate of which the plot had been allotted to her in the first instance.

2. The said suit no.17/2016 had been filed by the plaintiff nos. 1 to 5 seeking a declaration to the effect that Shrimati Dhan Devi Kapoor was the rightful owner and allottee of Plot No. 10/11 in village Serai Shah Ji, now known as Sarva Priya Vihar, New Delhi, and after her demise on 12.04.1980, the plaintiffs No. 1 to 5 and the defendants No. 4 to 8 being her heirs and legal representatives were entitled to be substituted in her place in the records of the defendants No. 1 and 2 and sought that a sub-lease executed and registered in the name of defendant No. 3 by the defendant No. 1 was illegal and void and not binding on the plaintiffs No. 1 to 5 and the defendants No. 4 to 8. A further prayer was made by the plaintiffs to the effect that a mandatory injunction be issued to the defendant nos.1 and 2, ordering them to get executed and registered the sub-lease of the plot in question in favour of the Plaintiffs No. 1 to 5 and defendants No. 4 to 8 in the ratio of 1/7th each to the Plaintiffs No. 1,2,4 and 5 and the defendants No. 4

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and 5 and one seventh collectively in the name of defendants No. 6 to 8 and Plaintiff No. 3, against the payment of the balance sum of Rs.7823.00. A further prayer was made by the plaintiffs to the effect that a permanent injunction be also issued restraining the defendants nos.1 to 3 from in any manner interfering or claiming any right in the Plot in question.

3. As per the facts brought forth through the record and also reproduced in the impugned judgment dated 29.08.2018 of the learned ADJ, South in the first appeal bearing RCA No.62/2017 that had been filed by the appellant Deepak Kapoor son of Raj Kapoor against the order dated 19.02.2017 of the Court of the learned Civil Judge whereby the Civil Suit No.17/2016 seeking the declaration and injunction aforementioned in para 2 hereinabove had been rejected by the Trial Court observing to the effect that that suit touched the business of the Co-operative Society i.e. the defendant no.1 arrayed to that suit and in view of Section 60 & 93 of the Delhi Co-operative Societies Act, 1972, the jurisdiction of the Civil Court was barred and thus, the suit could not be tried by the Civil Court.

4. As per the averments made in the plaint, late Shrimati Dhan Devi Kapoor who had paid the entire consideration qua the plot in question to defendant no.1 i.e. the Sarvapriya Cooperative House Building Society Ltd. which was leased out by the defendant no.2 i.e. the Delhi Development Authority, Cooperative Societies Cell Vikas Sadan, I.N.A Market, New Delhi, in as much as, she had paid Rs.19497 at the rate of Rs.65 per square yard i.e. at the rate of which the plot had been allotted to her at the first instance, after her demise

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on 12.04.1980 on about 15.06.1981, the defendant no.1 wrote a letter to late Shrimati Dhan Devi Kapoor informing her that for various reasons, the defendant no.1 had been facing a lot of difficulties in execution of the perpetual lease and sub-lease with the defendant no.2 and it was only after a lot of struggle and completing a number of formalities with the defendant no.2 and all other authorities concerned that clearance for the execution of perpetual lease and sub-lease had been obtained. As per the said letter, the defendant no.1 informed late Shrimati Dhan Devi Kapoor that though she had paid a sum of Rs.19,497 at the rate of Rs.65 per square yard but now the total cost of her developed plot after completing the formalities amounted to Rs.30,450 at the rate of Rs.105 per square yard and in order to expedite the execution of the perpetual lease deed with the defendant no.2 and a sub-lease with her qua the plot earmarked for the allotment to her, she should make a further payment of Rs.10,953/-.

5. As per averments made in the plaint, the plaintiff no.2, Sh.Maharaj Kumar Kapoor vide a registered letter dated 07.02.1983 informed the President of the defendant no.1, the Society arrayed as the respondent No. 2 to the present regular second appeal that his mother Smt.Dhan Devi Kapoor to whom the plot had been leased out, had expired on 12.04.1980 without making a will and had left behind seven legal heirs. The said plaintiff no.2 who has apparently since expired and is represented through his legal heirs in the present appeal as per averments made in the plaint also enclosed a cheque of Rs.1,545/- in favour of the defendant no.1 being his 1/7th share of the balance amount of Rs.10,953/- which had been demanded by the

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defendant no.1 and an affidavit was also submitted informing the defendant no.1 that the other legal heirs would also be furnishing their respective shares towards the said plot and that the sub-lease be executed in favour of the legal heirs at an early date. The plaintiff no.2 also requested that all communication in relation to the plot be sent only through registered AD posts.

6. It has been averred in the plaint that the defendant no.1 duly encashed the cheque and credited the same into its account. It was submitted further through the plaint that vide a registered letter dated 19.06.1984 addressed to the President of the defendant no.1, i.e., the Society, the plaintiff no.2 reminded the defendant no.1 of his having sent a cheque of Rs.1565/- on 07.02.1983 towards his 1/7th share of the dues qua the plot in question to facilitate the registration in favour of the legal heirs, which cheque has since been encashed by the defendant no.1 and that he believes that the payment from other legal heirs was also received by the Society.

7. *Inter alia* the plaintiff no.2 placed on record the names and addresses of other legal heirs informing the Society so that the said legal heirs could be informed to make the relevant payment at the earliest and that the perpetual lease/ sub-lease could be executed in favour of the legal heirs at an early date. The plaintiffs through their plaint however submitted that they were surprised to see a letter dated 21.05.1984 from the defendant no.2, i.e., the Delhi Development Authority (DDA) asking them to show cause as to why the allotment of the plot be not cancelled as the allottee had not got executed/registered a sub-lease and the said letter also sought that the

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same should be executed and registered within a period of 30 days from the issuance of that letter and in case the allottee failed, it would be presumed that she was not interested. This letter issued by the DDA was also addressed to late Smt.Dhan Devi Kapoor and a copy was sent to the defendant no.1. The plaintiffs had further submitted through their plaint that though the defendant no.1 was fully aware of the demise of Shrimati Dhan Devi Kapoor, they apparently deliberately did not inform the defendant no.2 of the same with ulterior motives.

8. It was further submitted through the plaint that on 06.06.1984 vide a registered letter, the plaintiff no.3 and defendant nos.6, 7 & 8 informed the Lease Administrative Officer, Co-operative Cell (**Societies**) of the defendant no. 2 i.e. of the DDA in response to the show cause notice and placed on record the factum of demise of Shrimati Dhan Devi Kapoor on 12.04.1980 and about the surviving legal heirs and also informed them that they were always ready and willing to have the sub-lease executed in their favour but that the defendant no.1 had not given any indication whatsoever as to when the sub-lease was to be executed and in this behalf that as soon as they heard from the defendant no.1, they would immediately do the needful.

9. The plaintiffs also requested the Lease Administrative Officer of the DDA i.e. the defendant no.2 to the suit arrayed as the respondent no.3 to the present regular second appeal to execute the sub-lease in favour of the legal representatives of late Shrimati Dhan Devi Kapoor. The plaintiffs further submitted through their plaint that the other plaintiffs who had not paid their shares, had also repeatedly

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gone to the Secretary of the defendant no.1 and other office bearers so that they receive the amount and execute the sub-lease but it was to no avail and they were put off on one pretext or the other and were finally told that since Shrimati Dhan Devi Kapoor had died, the legal heirs must obtain a probate/letters of administration from a Competent Court before the sub-lease would be executed in their favour. It was submitted further through the plaint by the plaintiffs that on 16.10.1986, the plaintiff no.2 informed the defendant no.1 that he was writing the letter in relation to the plot in question as had been allotted to late Shrimati Dhan Devi Kapoor and placed on record that he had been visiting the office of the defendant no.1 on several occasions to ensure that the plot allotted to late Shrimati Dhan Devi Kapoor, the mother of the plaintiff no.2 be registered and mutated in favour of the legal heirs and that the defendants were reluctant to do the same stating that they were not aware whether Shrimati Dhan Devi Kapoor had died intestate and left no will and that they the plaintiffs had already filed on the advice of the defendants, the petition seeking the grant of letters of administration and once again requested the defendant no.1 to register the plot in favour of the legal heirs without creating further formal letters of administration and also requested that the plot of land continue to remain allotted in favour of Shrimati Dhan Devi Kapoor or her legal heirs.

10. The plaintiffs further submitted through their plaint that on 26.06.1988, the plaintiffs noted that a *Havan (Bhoomi Pooja)* was being performed at the site of the plot allotted to and owned by late Shrimati Dhan Devi Kapoor and on further inquiry, it transpired that

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the plot in question had been allotted to the defendant no.3 i.e. the appellant of the present regular second appeal. The plaintiffs thus on further inquiry learnt that the plot had been wrongly and illegally allotted to the said defendant no.3 i.e. the present appellant and submitted that the action of the defendant nos. 1 & 2 i.e. the respondent nos. 2 & 3 to the present appeal i.e. the Society and the DDA in allotting the plot belonging to late Shrimati Dhan Devi Kapoor to the defendant no.3 i.e. the present appellant, was ultra vires, arbitrary and against the provisions of natural justice and was malafide and had been done with ulterior motives for illegal consideration.

11. The plaintiffs through their plaint had submitted that in as much as, late Shrimati Dhan Devi Kapoor had paid full consideration of the plot allotted to her and the registration and execution of sub lease was not effected because of her demise on 12.04.1980 and thereafter had been allotted to the defendant no.3 illegally and arbitrarily by the defendant nos.1 & 2 i.e. the respondent nos. 2 & 3 to the present regular second appeal and that the defendant no.3 i.e. the appellant herein had no right, title or interest in the same. The plaintiffs further submitted through their plaint that the value of the land had appreciated tremendously and that it was for ulterior motives that the allotment had been cancelled by the Society and its office bearers so that the allotment could be done with illegal gratification and that the plaintiffs and other legal heirs of late Shrimati Dhan Devi Kapoor had been deliberately kept in the dark despite a plethora of correspondences that had been made with them.

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12. It was further submitted through the plaint that the defendant no.1 having accepted the payment from the legal heirs of late Shrimati Dhan Devi Kapoor, they were now legally bound to execute the sub-lease in favour of the legal heirs and were bound to substitute the legal heirs of late Shrimati Dhan Devi Kapoor and had no right to cancel the allotment much less to make the allotment to anyone.

13. The defendant no.1 to that suit i.e. the Sarvapriya Cooperative House Building Society Ltd. arrayed as the respondent no.2 to the present regular second appeal contended that the suit was barred under Section 90 of the Delhi Cooperative Societies Act, 1972, in as much as, no prior notice had been given to the Registrar of Co-operative Societies before filing the suit, that the suit was barred under Section 93(1)(c) of the Delhi Cooperative Societies Act, 1972 r/w Section 60 which itself provided the machinery for settling disputes and was also barred under Rule 35(7) of the Delhi Cooperative Societies Rules 1973 which provided an alternative remedy of appeal to the Registrar of the Co-operative Societies.

14. *Inter alia* the defendant no.1 submitted that the injunctions prayed for by the plaintiffs cannot be granted in terms of Section 41(h) of the Special Relief Act, 1963. The defendant no.1 further submitted that the plaintiffs had not come with clean hands and that the plaintiff nos. 1, 2 & 5 and defendant no.4 were already members of defendant no.1 i.e. the Sarvapriya Cooperative House Building Society Ltd. and the stated legal heirs of late Shrimati Dhan Devi Kapoor also had property in the Union Territory of Delhi and were thus not eligible to the sub-lease of a plot in the defendant no.1- Society.

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15. The defendant no.1 however denied that it did not inform the defendant no.2 i.e. the DDA of Shrimati Dhan Devi Kapoor's demise and rather stated that they had so informed the DDA vide a letter dated 20.05.1984 and that the Society had also informed the DDA of her **address** vide a letter dated 16.09.1983. The defendant no.1 however admitted the receipt of the letter dated 06.01.1984 as averred in paragraph 10 of the plaint, whereby, it had been submitted by the plaintiffs to the effect:-

“10. That, however, on 6th of June, 1984, by means of a Registered Letter the Plaintiff No. 3 and Defendant Nos. 6,7 and 8 informed the Lease Administrative Officer Cooperative Cell (Socy) of the defendant No. 2 that they were replying to the show cause notice and that it seems that apparently the show cause notice has been issued without all relevant facts having been brought to his notice. The Plaintiffs put on record the fact of the death of Shrimati Dhan Devi Kapoor on 12.4.1980 and that at the time of her death she was survived by the Plaintiff No. 3 and defendants No. 7 to 8 as her legal heirs, being the son and the daughters of a pre-deceased son. Shh S.P. Kapoor besides other heirs. They further informed him that they were always ready and willing to have the sub-lease executed in their favour but the defendant No. 1 has not given any indication whatsoever as to when the sub-lease is to be executed and no sooner do they hear from the Defendant No. 1 in this behalf, they would immediately do the needful. They further requested him to advise the defendant No. 1 to execute the sub-lease in favour of the Legal Representatives Late Shrimati Dhan Devi Kapoor. A copy of this letter was also sent to the defendant No.1.”

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16. The defendant no.1 also admitted that the persons who claim to be the legal heirs of late Shrimati Dhan Devi Kapoor were asked to obtain the succession certificate because the deceased had not nominated any of the relations as her successor as per entries in the Register of members of the defendant-Society and that the defendant no.1 had also published legal notices in the newspapers asking the legal heirs of late Smt.Dhan Devi Kapoor to contact defendant no. 1 for settlement of her deposits with the society within 15 days of the notice and that it was further notified in the public notice that was published in the “Indian Express” (English) and in the Nav Bharat Times (Hindi) on 31.01.1987 that the claim must be accompanied by a succession certificate.

17. The defendant no.1 i.e. the respondent no.2 to the present regular second appeal submitted that the legal heirs of the deceased member had no right to the plot allotted to the deceased member unless they were eligible for the same and were admitted to the membership of the Society in place of the deceased member and submitted further that the mere allotment of the plot is of no consequence and so long as the lease deed in respect of the plot was not executed in the favour of the member, no right thereof accrued to him /her.

18. The defendant no.1 i.e. the respondent no.2 to the present appeal through its written statement before the learned Trial Court had submitted that the amount of Rs.19497/- that had been deposited by late Shrimati Dhan Devi Kapoor apart from her share money of Rs.100/- with the Society i.e. the defendant no.1, still stood to her

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credit and that the legal heirs of the deceased member were entitled to the refund of the money in terms of Section 26 of the Delhi Co-Operative Societies Act, 1972, on their furnishing the requisite succession certificate in support of their claim but have no right to the plot allotted to her because the same was not leased to her.

19. The defendant no.1 had further submitted that the legal heirs in any case had a right only to what the deceased member had on the date of her death and that the plaintiffs had admitted that the plot in question had not been sub-leased to her i.e. to the deceased member and thus she had not acquired any lease hold rights. The defendant no.1 had further submitted through its written statement and that further under the procedure in vogue before a sub-lease was executed the allottees had to submit affidavits declaring, inter-alia that he/she was not a member of any other Cooperative House Building society and that he/she did not hold any residential plot of land in Delhi, New Delhi or Delhi Cantt and that plaintiff nos. 1, 2 & 5 and defendant No. 4, were already members of defendant No. 1-Society and were holding plots therein and were ineligible for acquiring any another plot in defendant No. 1-Society and that the defendant No.8 i.e. Shrimati Rashmi Nagrath arrayed as the respondent no.6 to the present regular second appeal had been wrongly admitted to the membership of the Defendant-Society as her husband was already holding property in Delhi and her membership had been ceased by the Defendant Society on that account. The defendant no.1 had further stated through its written statement that the allotment of the plot in question to the

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defendant no.3 i.e. the appellant herein had been done by the defendant no.2 and not by the defendant no.1.

20. The defendant no.1 further denied that there has been any violation of the provisions of the Co-operative Societies Act or its Bye-laws made by the defendant no.1.

21. The defendant no.2 to the suit i.e. the DDA arrayed as the respondent no.3 to the present regular second appeal vide its written statement before the learned Trial Court admitted that Smt.Dhan Devi Kapoor was allotted Plot No. 10/11 in SarvaPriya Cooperative House Building Society Ltd. but submitted that every allottee in terms of the of the Lease with the Society had to get the sub-lease deed executed within one year from the date of confirmation of the allotment and since the sub-lease deed was not executed within the stipulated period, there was no alternative for the defendant no.2 i.e. the respondent no.3 herein to the present appeal but to issue a show cause notice.

22. The defendant no.2 through its written statement had further submitted to the effect that letters dated 24th July, 1986 and 6th September, 1986 were received from the President of the defendant No. 1 to the effect that Smt. Dhan Devi Kapoor, the allottee of plot no. 10/11 had died on 12th April, 1980 without leaving any nominee to whom the plot could be transferred and in the meeting held on 13th September, 1986 the Society had decided to cancel the allotment as no claimants had come forward and the Society had also informed that the said allotment stood cancelled and the defendant no.1 i.e. the Society i.e. the respondent no.2 herein was advised to issue a Public

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Notice in the press inviting the legal heirs of the deceased allottee vide office letter dated 01st January, 1987 of the defendant no.2 and in response, defendant No.1 i.e. the Society arrayed as the respondent no.2 to the present appeal had put forth a copy of the Indian Express and the Nav Bharat Times dated 21st January, 1987 and the defendant no.2 i.e. the DDA was informed that the Public Notice had duly been issued in the press and no one had submitted any claim.

23. The defendant no.2 through its written statement further submitted to the effect the President of defendant No.1 was asked by the letter dated 24th March, 1987 to furnish certain information and it was replied by their letter dated 25th March, 1987 that Smt. Dhan Devi Kapoor had left no Nominee with the Society and also requested the defendant no.2 to release the plot to be allotted to another eligible member and vide letter dated 29th June, 1987, the Society again requested for permission to cancel the allotment in the name of Smt. Dhan Devi Kapoor and to release the plot for further allotment. The defendant no.2 by the letter dated 14th January, 1988 addressed to the President of Defendant No.1 asked the President to furnish an undertaking on a non-judicial Stamp Paper of Rs.2/- declaring that in the event of any claim filed by any of the legal heirs of Smt. Dhan Devi Kapoor at a later stage, the Society shall be responsible for the settlement of their claim and the undertaking was duly furnished under their letter dated 15th January, 1988. The defendant no.2 had further stated that the society was again asked to ascertain as to whether the enquiry about the deceased allottee at the place of residence of late Smt. Dhan Devi Kapoor had been made or not, the Society vide their

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letter dated 23rd March, 1988 informed that the enquiry to ascertain the name of the Claimants/legal heirs at the last known address of Smt. Dhan Devi Kapoor had been completed and that it is understood that the Society passed a Resolution to cancel the allotment and that it was re-allotted to Shri Puneet Beriwal and it was sub-leased on 9th July, 1988.

24. The defendant no.2 further submitted that it was for the Plaintiffs to submit their claims(s) within three months from the date of demise of the allottee late Smt. Dhan Devi Kapoor and that they had failed to do so till the cancellation of the plot in question and as Smt. Dhan Devi Kapoor had not appointed any nominee, the action of cancellation of allotment was legal and proper and the defendant no.2 denied that the defendants were legally bound to execute the sub-lease in favour of the legal heirs of late Smt. Dhan Devi Kapoor.

25. The defendant no.3 to that suit before the learned Civil Judge i.e. the appellant to the present regular second appeal reiterated the submissions that have been made by the defendant no.1 in relation to the jurisdiction of the Civil Court being barred and the suit being barred in terms of the provisions of the Delhi Co-operative Societies Act, 1972 as well as in terms of the Special Relief Act, 1963.

26. The defendant no.3 i.e. the present appellant had submitted that he was a primary member of the defendant no.1 and had applied for a plot as a first preference to the defendant no.1, in the area of Sarvapriya Vihar; that initially the Defendant No.1 had handed over the flat No. 103 in Sarva Priya Apartment to him and had handed over the possession also of the same qua which a sum of Rs.5,00,063/-

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towards the full cost of the flat had been paid by the defendant no.3 i.e. the present appellant but the defendant no.3 i.e. the present appellant had made repeated requests to the defendant no.1 to consider it for the allotment of a plot instead of the flat allotted to him, as and when a plot becomes available and thus, on 15.04.1988 the defendant No.1 had decided to allot plot No.11/10 in SarvaPriya Vihar, the plot in question to the defendant No. 3 and that it was the defendant No. 1 who had written to the Delhi Development Authority recommending execution of the sub-lease in favour of the defendant no.3 for the plot in question, as a consequence of which, the defendant no.1 had informed the defendant no.3 that a sum of Rs.1,19,900/- would be utilized towards the cost of the said plot out of the deposit of Rs.500,063/- made by the defendant No.3 and that the balance sum of Rs. 3,80,161/- would be refunded.

27. The defendant no.3 i.e. the appellant herein had submitted through his written statement that on 9.6.1988 the perpetual sub-lease deed in relation to the said plot no. 11/10 was executed by the defendant Nos.1, 2 and 3 and it was registered at the office of the Sub-Registrar, Asaf Ali Road, New Delhi on 10.6.1988, as a consequence of which the defendant No.3 is a lessee of the said plot and enjoys the rights set forth in the sub lease deed. The defendant no.3 had further submitted that he had already spent towards Architect's fees, towards the fees for approval of the plan by the defendant no. 2; towards construction and towards costs of labour for digging for the basement. The defendant no.3 had thus sought the dismissal of the suit filed by the plaintiffs.

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28. The learned Trial Court vide its order dated 19.07.2017, disposed of an application under Order 7 Rule 11 CPC and under Order 14 Rule 2 r/w Section 151 of the CPC filed by the defendant no.1 i.e. the Society and held that the dispute in the case was one touching the business of the Society i.e. the defendant no.1 arrayed as the respondent no.2 to the present appeal and thus, in view of Section 60 & 93 of the Delhi Co-operative Societies Act,, 1972, the jurisdiction of the Civil Court was barred and the matter could not be tried by the Trial Court and thus, the plaint was rejected under Order 7 Rule 11(d) of the CPC.

29. In RCA No.62/2017, the first appeal filed by Sh.Deepak Kapoor, the legal representative of Sh.Raj Kumar Kapoor, the original plaintiff no.1 against the order dated 19.07.2017 of the learned Civil Judge in Civil Suit No.17/2016, the learned First Appellate Court set aside the order of the learned Trial Court and allowed the appeal of the legal heirs of the deceased/plaintiff no.1. The learned First Appellate Court placed reliance on the verdict of this Court in case of **Sh. R S Batra Vs. Burmah Shell Coop. Societies**, RFA no. 768/2005 decided on 28.03.2012 wherein it was observed to the effect:-

“In view of the above, that disputes in the subject suit pertain to the claim of ownership of the property/flat, and there is no classical dispute between the members of the society or between persons who claim through the members or between the society and the members etc. as per section 60 of the Delhi Co-operative Societies 1972. The disputes in the suit are to the rival claims of ownership to the flat.”,

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wherein it was thus held that the Courts below had committed an error including that the Civil Courts did not have jurisdiction to decide the disputes of such nature.

30. The First Appellate Court had observed vide paragraphs 6.3, 6.4, 6.5 to the effect:-

“6.3. The nature of dispute between the legal heirs of the allottee on one side and the society on the other side is that the allotment made to Smt. Dhan Devi Kapoor would not be cancelled and therefore, the above-mentioned plot no. 10/11 cannot be dealt with by any of the respondents.

6.4. The moot question now is whether the dispute above constitute dispute touching upon the constitution, management or business of the society or not;

6.5. I have given careful consideration to the gamut of the facts and find that the real nature of dispute is about the entitlement of allotment of plot number 10/11 which entails whether or not the society has acted in accordance with the procedures and Bye-laws laid down in this regard while making cancellation of the allotment. It cannot be lost sight that the reliefs claimed not against the respondent no. 1 but also against the DDA/respondent no. 2. It has already been discussed above that at the instance of the respondent no. 1 cancellation was made by DDA/respondent no. 2 and further it was the respondent no. 1 which submitted undertaking in the form of indemnity that in future if any claim arises due to cancellation agitated by the legal heir then the respondent no. 1 would be liable for the same. This fact alone would reveal that the action of the respondent no. 1 was not an independent but the same was carried through DDA and therefore any non-compliance of the procedures in this regard would not culminate into a dispute touching upon the business of the society particularly in view of the fact when the allotment was being made through DDA. In that event, the role of, the respondent no. 1 at best can be a

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collaborator or facilitator whereas the entire control of the project was with DDA. It is alleged by the appellant that the respondent no. 1 did not follow the procedures but hurriedly proposed for cancellation of the plot which ultimately resulted into an uncomfortable situation of making allotment of the same plot to another person. This dispute is not touching upon the business of the society but it is merely related to improper cancellation of one allotment resulting into improper re-allotment to another person.”,

and concluded vide paragraphs 6.8 & 7 to the effect:-

“6.8. The thrust of the judgment above revolves around the fact that not each and every dispute where the co-operative society is involved can be held to be the dispute touching upon the business of the society. It is further a settled principle of law that the exclusion of jurisdiction of civil courts provided under any statute should be construed very narrowly and the relevant provisions should be interpreted by adopting purposive interpretation. The interpretation should be such that the purpose of the provisions should be given effect to and it should not be widened enough so as to engulf the plenary jurisdiction of Civil Courts of adjudication of the civil disputes. In the statute under consideration, the Delhi Co-operative Societies Act, 1972, the purpose of providing exclusionary clause is to protect the Co-operative Societies and ensure smooth running of its regular business. It is in this background that Section 60 of Act, 1972 has excluded three categories of disputes namely touching the Constitution, management or the business of the co-operative society. The principle of Ejusdem Generis a Latin term which means "of the same kind," comes into play which means that the words in immediate vicinity constitute one group and should be interpreted similarly. The above-mentioned protection from disputes encompassing constitution, management or the business have been put together with a view that the defined

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authority (the Registrar of Societies) would be more suitable to resolve these disputes. This interpretation is further supported from the fact that only limited class of litigants are eligible to avail this remedy. This limited class of litigants include members and their representatives etc. 'It is also relevant to appreciate that the defined authority does not possess adequate expertise to handle complex issues of civil dispute which necessarily involve taking of evidence and its appreciation. In this background, it can be understood that the complex issue of ownership would entail series of documents and evidence on behalf of contesting parties. In respectful guidance from the above-mentioned decided case it can be concluded that the dispute in the present case does not qualify to be the dispute as defined in Section 60 of the Act, 1972. The Ld. Trial Court committed an error in holding that the jurisdiction of civil courts is barred, therefore, the order of the trial court is set aside.

7. In view of above discussion, the appeal of the appellant is allowed. Parties are left to bear their own cost.”

31. The proceedings of the learned Trial Court in Civil Suit bearing previous No.17/16 now bearing Misc.SCJ No.188/18 titled **Deepak Kumar Vs. Sarvapriya Housing Building** is indicated to have been re-notified vide order dated 18.03.2021 for further cross-examination of the witness produced as PW-3, which cross-examination is to be conducted by the defendant no.1 apart from the same, the said proceedings also indicate that there were some talks of settlement which had not been finalized till then. The proceedings in Probate Petition No.80/86 that had been instituted before this Court indicate that the said probate petition was dismissed for non-prosecution on 23.11.1994.

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32. Vide the present appeal, the defendant no.3 to the suit filed by Sh.Raj Kumar Kapoor (who is now since represented by his legal heirs) assailing the impugned order dated 29.08.2018 of the First Appellate Court in RCA 62/17 contends to the effect that the learned ADJ had failed to appreciate that the dispute as raised in the suit was between the heirs of the deceased member and the Society i.e. the respondent no.2 and also between the members of the Society and in terms of Sections 60 & 93 of the Delhi Co-operative Societies Act, 1972, the jurisdiction of the Civil Court is barred.

33. The appellant further submitted that the entire dispute pertains to the business of the Society and that the learned ADJ had erroneously held that the meaning of the dispute as given in Section 60 of the Delhi Co-operative Societies Act, 1972 is to be given a narrow meaning. *Inter alia* it was submitted on behalf of the appellant that the verdict of the Hon'ble Division Bench of this Court in "**Jagdish Singh Vs. Registrar Cooperative Societies, Delhi & Ors.**" (1985) ILR 1 Delhi 352 has overruled the reasoning that had been sought to be given by the learned ADJ interpreting Section 60 with a narrow meaning.

34. The appellant further contended that the learned ADJ had erroneously held that the Registrar of Co-operative Societies, Delhi had no authority to record the evidence and adjudicate contentious issues between the parties and that the said reasoning is faulty in terms of Section 61 of the Delhi Co-operative Societies Act, 1972 which provides that the Registrar of Co-operative Societies, Delhi on receipt of the reference of the dispute, can refer it to the Arbitration and the

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Arbitrator has all the authority to record all the contentious issues between the parties.

35. *Inter alia* the appellant submitted that the First Appellate Court had failed to appreciate that the dispute did not pertain to the title of the property but to the entitlement of the property and that the dispute in terms of the provisions of the Delhi Co-operative Societies Act, 1972 falls within the domain of the Registrar of Co-operative Societies, Delhi and that the jurisdiction of the Civil Courts is completely barred. The appellant also submitted that the learned ADJ had failed to appreciate that the DDA arrayed as the respondent no.3 to the present appeal is only an acting authority that it has to register the sub-lease in favour of the person as notified by the Society, i.e. the respondent no.2 herein.

36. The other contention raised on behalf of the appellant was that as the business of the respondent no.2-Society is to develop plots, sell or lease them out, to construct flats to sell or lease them out in terms of the provisions of Section 60 of the Delhi Co-Operative Societies Act, 1972, the dispute pertains to the business of the society and thus, the jurisdiction of the Civil Courts is barred.

37. The appellant further submitted that the First Appellate Court had erroneously held that the dispute could not be referred to the Registrar of Co-operative Societies and submitted that the learned Trial Court had not applied the law correctly in terms of the verdicts relied upon on behalf of the appellant specifically in ***“Bhanushali Housing Cooperative Society Ltd. Vs. Mangilal & Ors.” (2015) 10 SCC 277*** wherein it had been specified as to what constitutes the

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business of the Society. The appellant thus submitted that the learned Trial Court had correctly allowed the application under Order 7 Rule 11 and Order 14 Rule 2 of the CPC r/w Section 151 of the CPC.

38. The appellant thus submitted that substantial questions of law arise in the matter for determination and submitted that they be framed and the matter be taken up for consideration for hearing of the appeal. The questions of law sought to be urged by the appellant read to the effect:-

“I. Whether in the light of the Judgment of the Hon'ble Supreme Court in the case Titled “Bhanushali Housing Cooperative Society Ltd.Vs. Mangilal & Ors.” (2015) 10 SCC 277 and the judgment Titled “Jagdish Singh Vs. Registrar, Cooperative Societies, Delhi & Ors.” (1985) ILR Delhi 352 a narrow meaning can be given to the provision in the enactment where the jurisdiction of the Civil Courts are barred or excluded?

II. Under what circumstances a dispute involving the cooperative society and its members can be said to be out of the scope and ambit of the Delhi Cooperative Societies Act, 1972?

III. Can a dispute involving the business of the Cooperative Society and the actions taken by the Cooperative Society as per its constitution, management and bye-laws be regarded as out of the scope of the Delhi Cooperative Societies Act?

IV. What are the parameters for determining the business of the Cooperative Society?

V. Can a dispute inter-se the members of the Cooperative Society and the dispute between the Cooperative Society and its members be relegated out of the purview of the Delhi Cooperative Societies Act, 1972 merely because the

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Registering Authority is also a party to the case (in the present case Delhi Development Authority)?”

39. Reliance was placed on behalf of the appellant on the verdict of the Hon’ble Division Bench of this Court in “***Jagdish Singh Vs. Registrar Cooperative Societies, Delhi &.Ors.***” in Civil Appeal No.1411/1982 decided on 08.10.1984 in which case, the petitioner thereof with the course of his employment with the respondent no.3-Bank was given substantial rank of a Deputy Manager on 03.02.1980 and later on disciplinary proceedings against him were started and he was given a charge sheet on 29.12.1980 and ultimately the services of the petitioner therein were terminated on 27.01.1981. The petitioner in that case moved an application under Section 60 of the Delhi Co-operative Societies Act, 1972 seeking to raise a dispute about termination of his services and vide order dated 28.01.1982, the petitioner not being a paid employee was not permitted to raise a dispute under Section 60 of the Delhi Co-operative Societies Act, 1972 and the order of termination on the services of the petitioner was held to be that related to the merits of the case and it was held that the application **qua arbitration** under Section 60 of the Delhi Co-operative Societies Act, 1972 was not maintainable.

40. The Hon’ble Division Bench of this Court in “***Jagdish Singh Vs. Registrar Cooperative Societies, Delhi &.Ors.***” (1985) ILR 1 Delhi 352 had observed vide paragraphs 4 & 5 to the effect:-

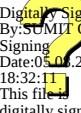
“(4) We have gone through the judgment of Avadh Behari, J. and though the counsel for respondent has made some effort to support the judgment, we cannot accept and we say with respect, its correctness. We cannot read sub-s. (2) of

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Section 60 as a definition section which defines disputes which alone could be referred to arbitration under Section 60. This interpretation completely ignores the various disputes which are mentioned in sub-s.(1) and which shall be referred to arbitration under Section 60. If disputes mentioned in sub-section (2) of Section 60 are the only ones which could be referred to arbitration, the whole of sub-s. (1) becomes otiose and it is impermissible to attribute any superfluity to the legislature. Also it would make no sense as to why sub-s. (1) was enacted at all if the disputes which could be referred are only those covered by sub-s. (2). So interpreted all the disputes referred to in sub-s. (1) of Section 60 would become non-referable. For example clause (c) of sub-s. (1) of Section 60 provides for a reference of disputes between a society of its committee and any past committee and any officer or employee. Sub-s. (2) does not cover any such dispute. Similarly a dispute between the society and another cooperative society or with a liquidator of any other society mentioned in clause (d) of sub-s. (1) of Section 60 would also not be referable on the reasoning of Avadh Behari, J. This total emasculation of sub-s. (1) of Section 60 is an impermissible interpretation. We are of the view that when deeming language was used in sub-s. (2) all that it means is that notwithstanding that the categories mentioned in sub-s. (2) may not even satisfy the test of being disputes touching the constitution or business of the society they shall be deemed to be disputes which they would not be but for the deeming provision. Thus clause (b) dealing by a claim by a surety against a principal debtor, could never be included as a dispute touching the constitution, management or business of the society, and would not have been referable under Sub-s. (1) of Section 60. Hence, the necessity to enlarge the scope of items which could be referred to arbitration. Similarly, a dispute regarding election of office bearer of society had been held by some courts not to be covered in sub-s. (1) of Section 60. The misconception in the judgment of Avadh Behari, J. has arisen from the unfortunate draftsmanship by which similar

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provision in other Acts has been put in different but totally unnecessary language in Delhi Act. In Acts of other States e.g. Maharashtra Act after providing for situation is sub-s. (1) Explanation (2) has been added to say that for the purpose of this sub-section a dispute shall include and there are reproduced almost exactly provisions similar to clause (a) and (b) of sub-section (2) of Section 60 of Delhi Act. (Sec Deccan Merchant Cooperative Bank Ltd. v. M/s. Dalichand Jugraj Jain and others.) MANU/SC/0214/1968 : [1969]1SCR887 . Same is the position and Explanation added to subs. (1) of Section 61 of Andhra Pradesh Co-operative Societies Act. (See Co-operative Central Bank Ltd. and others etc. v. Additional industrial Tribunal, Andhra Pradesh, Hyderabad and others etc MANU/SC/0611/1969 : (1969)1ILLJ698SC). Of Course, sub-s. (2) of Section 60 of Delhi Act has changed the phraseology to making the disputes mentioned therein deemed to be disputes, but it cannot be taken that they are the very disputes which can be referred and sub-s. (1) has become redundant. The word dispute as not been defined in the Act nor in sub-s. (2). [The term 'dispute' means a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other.] (The Gujarat State Co-operative Land Development Bank Ltd., v. P. R. Mankad and another; MANU/SC/0508/1979 : [1979]2SCR1023). In our view Avadh Behari, J. has taken a very narrow view on the mere absence of the word 'also' in sub-section (2) because he accepts that if the word 'includes' and 'also' were to be found in sub-section (2) it would have been permissible to regard categories of disputes mentioned in sub-s.(2) as additions to those mentioned in sub-s. (1). But then Low can we read the statute in such a manner that the whole of sub-section (1) of Section 60 should become a dead letter and a useless appendage in the Act which is the assent if the interpretation of Avadh Behari, J. was to be accepted. By now it is recognised all around that Co-operative movement should be encouraged as well that as many disputes as

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possible should be settled in the forum by arbitration. To accept the interpretation of Avadh Behari, J. would be to seriously strangle the development of arbitration machinery, a positive disservice to the cooperative movement also. The trend of later cooperative legislation is to expand the scope of disputes which are referable to arbitration. We cannot allow a casual act of bad draftsmanship of sub-s (2) to nullify to a very large extent the whole object and purpose of the latest Act of 1972. The later Act could not in logic provide by one hand matters referable for disputes in sub-s. (1) and take away as if sleight of hand, all those categories by sub-s. (2) if interpreted as by Avadh Behari, J.

(5) The only logically inevitable conclusion is that [sub-s. (2) of Section 60 of Delhi Act enumerates disputes, which are in relation to the disputes mentioned in sub-s. (1) of Section 60 with the result that if disputes touching the constitution management and business of the society fall within the contour of either sub-s. (1) or sub-s. (2) of Section 60 of Delhi Act, they are referable to arbitration.] We must, Therefore, with respect hold that Chander Nagar House Building Society Ltd. and another v. Ashok Ohri (supra) does not lay down correct law and is, Therefore, overruled.”,

the matter in that case was remitted back by the Hon’ble Division Bench to the Single Bench of this Court on the basis of the findings on the question of law given by the Hon’ble Division Bench.

41. Reliance was also placed on behalf of the appellant on the verdict of the Hon’ble Supreme Court in **“Bhanushali Housing Cooperative Society Ltd. Vs. Mangilal & Ors.”** in Civil Appeal No.5704/15 decided on 24.07.2014, which matter related to Section 64 of the M.P. Co-operative Societies Act, 1960 and it was observed vide paragraph 3 of the said verdict to the effect:-

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“3. A careful reading of the above would show that for a dispute to be brought within the purview of Section 64 two essential requirements must be satisfied viz. (i) that the dispute must “touch the constitution, management or business of the society or must relate to the liquidation of the co-operative society;” and (ii) that the dispute must be between parties referred to in clauses ‘a to f’ of Section 64(1) (supra). It is only when the twin requirements are in the facts and circumstances of a given case satisfied that a dispute can be said to be amenable to adjudication under Section 64. Failure of any one of the two requirements would take the dispute beyond the said provision.”

The question that arose for consideration in that appeal by Special Leave before the Hon’ble Supreme Court was whether the dispute arising out of a contract for sale and purchase of immovable property owned by the respondents was amenable to adjudication under Section 64 of the M.P. Co-operative Societies Act, 1960 and in view of the objects of the appellant Society has set out in the Articles of Association, which read to the effect:-

“Objective of this society would be to make arrangement for the construction of building, to purchase, sale, take on rent or rent out, prepare land for construction of building and to make arrangement related to social, educational and entertainment to its members and it would be complete right to this society to carry out such work which will be necessary and proper in its opinion. These rights shall mean and include to purchase land, take land on lease, sale, exchange, mortgage, let out on lease, sub-lease, to give resignation, or to accept resignation and to do all other relative work and to sell the building on instalment on proper and necessary restrictions, to give loan or guarantee of loan for facilitating construction of building, to make repairing, and will include other rights to carry out work related to it.”

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and thus, it was held vide paragraph 13 of the said verdict of the Hon'ble Supreme Court to the effect:-

“13. Purchase of land for being used in the manner set out in the objects extracted above is, therefore, one of the facets of the business that the society undertakes. Such purchase is directly linked to the object of developing the acquired land for allotment of house sites to the members of the society. There is, therefore, a clear and discernible nexus between acquisition/purchase of land and the object of providing house sites to the members which under the circumstances happens to be the main business of the society. It is not a case where the facts giving rise to the dispute are not relatable to the objects of the society or where the connect between the facts constituting the dispute and the objects of the society is remote or their interplay remarkably tenuous or peripheral, as was the position in Co-operative Central Bank Ltd.'s case (supra) involving alteration of the conditions of service of the employees of the society. We have in that view no hesitation in holding that the dispute arising out of the purchase of the land owned by the respondents was, in the instant case, a dispute touching the business of the appellant-society. Question No.1 is answered accordingly.”

however, as regards the question no.2 formulated, which reads to the effect:-

“(ii) whether the dispute sought to be raised arising as it is out of the execution of a contract for sale of property by the respondent in favour of the appellant-society constitutes “business transactions” within the meaning of Section 64 (1)(c)?”

it was observed vide paragraph 14 to the effect:-

“14. The second essential requirement for a dispute to fall within the purview of Section 64 is that the parties to the dispute must be those enumerated in sub-clauses ‘a to f’

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under Section 64 of the Act. Clause (a) of Section 64(1) envisages disputes between a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased agent or deceased servant of the society, or the liquidator of the society. This clause has obviously no application to the facts of the present case. That is true even about clause 'b' whereunder the dispute between a member, past member or a person claiming through a member, past member or deceased member of a society or of a society which is a member of the society is brought within the purview of Section 64. We shall presently deal with clause 'c' to Section 64 (1) upon which counsel for the appellant-society placed reliance but before we may do so we may deal with the application of clauses (d), (e) and (f). Clause (d) of Section 64 (1) envisages disputes involving a surety of a member, past member of the society, member or a person other than a member who was appointed by the society; whether or not such a society is a member of the society. So also clauses (e) and (f) do not have any application to the case at hand as the same deal with disputes between any other society, the liquidator of such a society or creditor of a society.”,

and on the basis of the provisions of Section 64(1)(c) of the M.P. Co-operative Societies Act, 1960, it was held that the word business transactions therein has necessarily to mean more than a single transaction and that a single transaction as in the circumstances of the case before the Hon'ble Supreme Court would not constitute business for both the parties to the transaction and that the legislature having used the expression business transaction had left no manner of doubt and it was not just a solitary transaction between a Society on one hand and the third party on the other which would bring any dispute

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arising out of any such transaction within the purview of Section 64(1)(c) of the M.P. Co-operative Societies Act, 1960, the observations in paragraphs 21, 22, 23, 24 and 25 of the verdict of the Hon'ble Supreme Court are to the effect:-

“21. Suffice it to say that while the expression “business” is of a very wide import and means any activity that is continuous and systematic, perceptions about what would constitute business may vary from public to private sector or from industrial financing to commercial banking sectors. What is certain is that any activity in order to constitute business must be systematic and continuous. A single transaction in the circumstances like the one in the case at hand would not constitute business for both the parties to the transaction. At any rate, the legislature having used the expression “business transactions” has left no manner of doubt that it is not just a solitary transaction between a society, on the one hand, and a third party, on the other, which would bring any dispute arising out of any such transaction within the purview of Section 64(1)(c). The dispute must be between parties who have had a series of transactions, each one constituting a business transaction in order that the provisions of Section 64 are attracted and a dispute arising out of any such transaction brought within its purview.

22. The argument that the plural used in the expression “business transactions” must include the singular in view of the provisions of Section 5(b) of the M.P. General Clauses Act has not impressed us. We say so because Section 5 of the M.P. General Clauses Act, 1957 like Section 13 of the Central General Clauses Act postulates singular to include the plural and vice-versa only if no different intention appears from the context. That intention, in the case at hand, appears to be evident not only from the scheme of the Act but also from the context in which the expression “business transactions” has been used. The purpose and the intent underlying the provision appears to be to bring only

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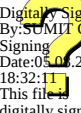
such disputes under the purview of Section 64 as are disputes arising out of what is business for both the sides and comprise multiple transactions. Decisions of this Court in Newspapers Ltd. vs. State Industrial Tribunal, U.P. and Ors. (AIR 1957 SC 532) and M/s. Dhandhanika Kedia & Co. vs. The Commissioner of Income Tax (AIR 1959 SC 219) have settled the legal position and declared that the principle underlying Section 13 of the General Clauses Act regarding singular including the plural and vice versa does not have universal application and that the principle can apply only when no contrary intention is deducible from the scheme or the language used in the statute.

23. In the case at hand, that there was a single transaction whereunder the respondents-sellers had agreed to sell to the appellant-society a parcel of land to the society, for use by the society in terms of the objects for which it is established. It may, in that sense, be a transaction that touches the business of the appellant-society but it is common ground that the respondents were not in the business of selling land as a commercial or business activity for it is nobody's case that the respondents were property dealers or had a land bank and were, as a systematic activity, selling land to make money. If the respondents were agriculturists who had agreed to sell agricultural land to the appellant-company, the transaction was, from their point of view, not a "business transaction". For ought we know that transaction may have been prompted by family necessity, poverty or some such other compulsion. Such a transaction without any business element in the same could not constitute a "business transaction" leave alone "business transactions" within the meaning of Section 64(1)(c).

24. For the reasons stated above Question No.2 is to be answered in the negative.

25. In the result this appeal fails and is hereby dismissed, but in the circumstances leaving the parties to bear their own costs."

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consequently the appeal that had been filed by the appellants in ***“Bhanushali Housing Cooperative Society Ltd.*** (supra) was dismissed.

42. The respondent no.1 and the other legal representatives of the deceased member had filed a caveat bearing Caveat No.1147/2018 and the caveator, the respondent no.1 was thus heard and submissions were made on behalf of either side by their learned counsel.

43. The respondent no.1 placed reliance on the verdict of this Court in case of ***Sh. R S Batra Vs. Burmah Shell Coop. Societies***, RFA no. 768/2005 decided on 28.03.2012 with specific reference to observations in paragraphs 3, 4 & 5 of the said verdict, which read to the effect:-

“3. In the present case, the issue pertains to who owns the subject flat No. 505, Aradhana Apartments, Burmah Shell Cooperative Housing Society, R.K. Puram, New Delhi which belongs to the original member, Sh.J.S.Premi. Whereas the appellant claimed to be the nominee of the original member, Sh.J.S. Premi, the defendants no. 2 and 3 are the children and therefore the legal heirs of late Sh. J.S. Premi and who accordingly claimed entitlement to ownership of the subject flat. It was also pleaded by the defendants no. 2 and 3 that the appellant/plaintiff in fact had given an affidavit/indemnity bond that the appellant would surrender/relinquish his membership of the society in the event of the existing of bonafide successors of the original member, Sh. J.S. Premi claiming an interest in the share/property.

4. In view of the above, the disputes in the subject suit pertain to the claim of ownership of the property/flat, and there is no classical dispute between the members of the society or between persons who claim through the members or between the society and the members etc. as

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per Section 60 of the Delhi Cooperative Societies Act, 1972. The disputes in the suit are to the rival claims of ownership to the flat.

5. Accordingly, the impugned judgment and decree dated 15.3.2005 is set aside. It is held that the Civil Courts have jurisdiction to decide the disputes which are subject matter of the suit. Nothing contained in today's judgment is a reflection on merits of the case of either of the parties and the Trial Court will hear and dispose of the suit in accordance with law.”

wherein, it was thus laid down that in the facts and circumstances of the case where the subject suit pertained to the claim of ownership of the property/flat and there was no classical dispute between the members of the Society or between the persons who claim through the members or between the society and the members etc. as per Section 60 of the Delhi Cooperative Societies Act, 1972, the disputes in the suit were to the rival claims of ownership to the flat and that the Civil Courts had jurisdiction to decide the disputes were subject matter of the suit.

44. On behalf of the respondent no.1, it was thus urged that there was no infirmity whatsoever in the judgment of the First Appellate Court i.e. in the impugned judgment dated 29.08.2018.

45. The suit in question had been instituted on 04.07.1988 by the plaintiffs before this Court and due to change of pecuniary jurisdiction had been transferred to the District Courts i.e. the Court of the learned Senior Civil Judge.

46. The application under Order 39 Rule 1 & 2 of the CPC that had been filed by the plaintiffs was disposed of by this Court vide order

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dated 03.03.1989, wherein, it had *inter alia* been observed to the effect:-

“In present case objects of the Society have not been placed on record as yet. It cannot be said, for the present, that the suit is barred under section 60 or 93 of the Act. Similarly prima facie it cannot be said that notice under section 90 of the Act is necessary. Under section 90 notice is necessary only when a suit is in respect of any touching the business of the Society. Thus it is not possible to conclude that plaintiffs have failed to establish a prima facie in their favour.”

47. The observations in the order of this Court dated 03.03.1989 read to the effect:-

“In support of the contention that plaintiffs have no prima facie case, Mr. V.P. Singh, learned counsel for defendant No. 3, relying on proviso (ii) of section 26(1), submitted that heirs or legal representatives, were required to file an application before the Society claiming rights in the share or interest of the deceased member. Such an application was required to be filed within one month of the death but it was not filed and its effect, according to learned counsel is that Plaintiffs cannot now claim any such right.

The Society was informed of death of Smt. Dhan Devi Kapur on February, 1983. The Society had also received from one of the heir his share of balance amount. The Society had even asked the heirs to obtain succession certificate from Court. The decision of allot plot to defendant No. 3 was taken by the Society in April, 1988 and sub-lease was executed in June, 1988. Under Rule 35(6)(i) the Society is required to invite claims or objections for the proposed transfer of the share or interest of the deceased by a public notice exhibited at the office of the Society specifying the time within which claims or objections may be filed. Rule 35(6)(iii) provides that after taking consideration the claim or objections received in reply to the notice or otherwise and after making such inquiries as

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the committee considers proper in the circumstances prevailing, the committee has to decide as to the person who in its opinion is the heir or the legal representative of the deceased member and thereafter it has to - take action under section 26 to any – which may be filed to the Registrar by any person claiming the share or interest of the deceased member within 30 days of the decision of the committee. It is not the plea of the society that the provisions of Rule 35(5)(i) & (ii) were complied with. Under proviso (ii) of section 26(1) it is not necessary for a heir or legal representative to file any application. The requirement of filing an application is only when nominee, heir or legal representative wants to transfer his share to someone else whose name is to be specified in the application. It is only such type of application which is required to be filed within one month of the death of a deceased member. The society has placed on record copies of the public notices issued by it in Indian Express and Nav Bharat Times of 31st January, 1987. These public notices only say that the legal heirs are requested to contact the Society for settlement of her deposits. The Society had already cancelled the allotment of the plot in favour of Smt. Dhan Devi Kapur before issue of these public notices. The question whether any of the legal heir of Smt. Dhan Devi Kapur is qualified to become a member of the Society does not even appear to have been examined by the Society as the plea of the Society is that it is not aware whether Plaintiff No. 3 and defendants No. 5 to 7 hold any property in Delhi or not. A reading of Section 26 of the Act and Rules 35(6) prima facie does not show that it is necessary for the legal heirs to file any application within one month of the death of the deceased. Under section 26 share or interest of the deceased member is to be transferred in the manner prescribed in the rules. The rules cast an obligation in the Society to invite claims or objections in the manner provided therein. As observed earlier, it is not the case of the defendants that any claims or objections were invited in terms of the said rule.

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The manner or allotment of the plot in favour of defendant No.3 also casts a serious doubt about the whole process of allotment. Prompt action is certainly good but not the haste. In this case, on 14th April, 1988 defendant No.3 surrenders the flat in anticipation of the allotment of the plot. On April, 1988 decision about allotment is taken. On 28th April, 1988 defendant No.3 writes to the Society thanking it for allotment of plot in lieu of the flat and wanting to know the amount of refund he would get on surrender of the flat after adjustment of the cost of the plot. On 29th April, 1988 he is intimated that Rs.3,08,161/- would be refunded to him. On 3rd June, 1988 D.D.A approves the allotment and on 9th June, 1988 sub-leased is executed and on 10th it is registered. The plans are submitted to D.D.A on 27 June, 1988 but the Bhumi puja and digging for construction starts on a day earlier i.e. 26th June, 1988. These facts speak for themselves. In face of these facts, the argument that the allotment in favour of defendant No.3 was scrutinised and approved by three authorities i.e. Society, Registrar of Co-operative Society and the Delhi Development Authority is no of much significance particularly for determining the prima facie nature of the case. The execution of sub-leased in favour of defendant No.3 by itself cannot create any right and it has to be subject to rights of heirs of Smt. Dhan Devi.

*Now I will take up the plea of suit being barred under section 60 and 93 of the Act. No doubt that the scope of section 60 of the Act has been enlarged (**Jagdish Singh Vs. Registrar, co-operative and others, C.W. 1411/82 decided on 8th October, 1984**) but it still remain to be determine whether the subject matter of the suits is or is not a dispute touching the constitution, management or business of the Society. It is not the case of any party that dispute in question touch the constitution or management of the Society. Defendants say that disputes in question relate to business of the Society-Reliance is placed on judgment of **J.D. Jain, J. in Heade & Golav Ltd. Vs. M/s. National Co-operative consumers Federation Ltd. decided on August***

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11, 1981, on consideration of objects of the society as given in the Bye-laws in that case, J.D. Jain, J. came to the conclusion that the wording of the objects show that the Society can include in the business of procurement and distribution of consumer goods.

In present case objects of the Society have not been placed on record as yet. It cannot be said, for the present, that the suit is barred under section 60 or 93 of the Act. Similarly prima facie it cannot be said that notice under section 90 of the Act is necessary. Under section 90 notice is necessary only when a suit is in respect of any touching the business of the Society. Thus it is not possible to conclude that plaintiffs have failed to establish a prima facie in their favour."

48. The proceedings dated 03.03.1989 indicate that the defendant no.3 i.e. the present appellant had before this Court given an undertaking to the effect:-

"That I hereby given an undertaking that I shall complete the house on the plot in question at my own risk and cost subject to outcome of the suit and appeals etc., and during the pendency of the suit and appeals, if any, I shall not alienate, transfer, sell or part with possession of the plot in question."

49. However, in as much as, defendant no.3 had not given any undertaking in respect of the building vide order dated 03.03.1989, it was held that if the defendant no.3 was not restrained from alienating, transferring or parting with possession of the building, it was likely to create various complications and thus, the defendant No.3 i.e. the present appellant was restrained from alienating, selling, transferring or parting with possession of the building being constructed on the plot in question. An undertaking was also given by the Society i.e. the

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defendant no.1 arrayed as the respondent no.2 to the present appeal to the effect that the claims of the plaintiffs, legal heirs of late Smt.Dhan Devi Kapoor would be settled subject to the defendant no.1-Society's contentions/submissions in the suit and an affidavit was also given by Mr.S.P.Gupta, the President of Society i.e. the respondent no.2 herein before the learned Trial Court dated 17.01.1987 that in the event of the plaintiff's being found entitled to enrol themselves as member of the Society and if they were not visited with any statutory disqualification or disqualifications under the Bye-laws for allotment of a plot, the Society would reserve plot No. 12/23, measuring 151 sq. yds. for allotment to the plaintiffs and that this plot would not be allotted to any other member pending this suit nor the Society would part with possession of the said plot. The said undertaking given in the affidavit of Mr.S.P.Gupta was also accepted by this Court and I.A.3626/88 was allowed to the extent as indicated in the order dated 03.03.1989 and the undertakings of defendant no.3 i.e. the present appellant and Mr.S.P.Gupta on behalf of the Society i.e. the defendant no.1 arrayed as the respondent no.2 to the present appeal were accepted.

50. Undoubtedly, the proceedings dated 03.03.1989 relate to directions of an ad interim prayer and the suit is yet to be concluded on completion of trial with the matter presently being at the stage of cross-examination of PW-3, which cross-examination is to be conducted by the defendants, nevertheless, the aspect that the action of the respondent no.2 in the instant case was not independent but was carried out through DDA i.e. the respondent no.3 to the present appeal, itself makes it apparent that the matter does not exclusively

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relate to any dispute between stated members of the Society and the Society and cannot be stated to be related to the business of the Society.

51. The objects of the Society i.e. the respondent no.2 to the present appeal i.e. the defendant no.4 to the suit vide Bye-laws framed in terms of the Delhi Co-operative Societies Act, 1972 and Delhi Co-operative Societies Rules, 1973 read to the effect:-

“3. Its objects shall be

(i) To acquire either through outright purchase or on lease, land for;

(a) The development and construction of residential houses, flats for giving to a member either on lease or on rent or by outright sale or on hire-purchase system in the case of Group Housing, provided that ownership of land used for construction of flats shall always remain with the society.

(b) Allotment to its members, on such terms and conditions as may be fixed by the society in accordance with the byelaws and such other conditions as maybe laid down by Registrar/Government/ Delhi Development Authority etc. for the construction of houses/flats by the members for their own use.

(ii) (iii) (viii) ”,

Apparently though, thus, the objects of the respondent no.2 herein would include in terms of 3(1)(b) of the Bye-laws of the Society, allotment of residential houses/flats to its members, on terms and conditions as may be fixed by the society in accordance with the byelaws and such other conditions or in accordance with other conditions laid down by Registrar/Government/ Delhi Development Authority etc. for the construction of houses/flats by the members for

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their own use, however, this does not bring forth any object within the domain of the Registrar of the Delhi Co-operative Societies to adjudicate a dispute between a deceased member and her legal representatives who were not substituted in place of the deceased, the initial member when the said allottee had paid the full consideration as per the prevalent rate the time when she was allotted the plot, whereupon, the Society cancelled the allotment to Smt.Dhan Devi Kapoor despite her having paid the entire consideration amount as per the previous rates of the land in question and thus, whether the legal heirs of the deceased Smt.Dhan Devi Kapoor could be ousted from the right to be substituted in place of Smt.Dhan Devi Kapoor despite the plaintiffs having informed the Society concerned i.e. the respondent no.2 to the present appeal of the demise of Smt.Dhan Devi Kapoor, with there being no dispute between the members of the Society as such for allotment of the land in question to the defendant no.3 i.e. the appellant herein pursuant to a cancellation of the membership of Smt.Dhan Devi Kapoor, in the facts and circumstances of the instant case where there has been a repeated correspondence for the substitution of the legal heirs of late Smt.Dhan Devi Kapoor, the original member in the Society to whom the plot No.10/11 had been allotted but the sub-lease deed had not been executed and despite the admitted communication to the Society of the demise of Smt. Dhan Devi Kapoor and knowledge thereof by the defendant no.1 i.e. the respondent no.2 to the present appeal, there was a cancellation of the allotment made in her name without even knowledge of the same being given to the legal heirs of the deceased Smt. Dhan Devi

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Kapoor which thus brings forth as rightly held by the learned ADJ vide the impugned judgment that the nature of the dispute was about the entitlement of the allotment of plot No.10/11 to the legal heirs of the deceased Smt. Dhan Devi Kapoor and does not in any manner relate to any dispute qua the constitution, management or business of the Society and thus, Section 60 of the Delhi Co-operative Societies Act, 1972 was not an impediment to the claims made by the legal heirs of late Smt. Dhan Devi Kapoor to the plot in question.

52. In these circumstances, it is apparent that in the facts and circumstances of the instant case, there is no substantial question of law as claimed by the appellant that arises for determination.

53. This is so, in as much as, as laid down by the Hon'ble Supreme Court in ***“Union of India Vs. Ibrahim Uddin and Another” (2012) 8 SCC 148***, Section 100 of the CPC provides for a second appeal only on the substantial question of law and generally, a second appeal does not lie on question of facts or of law.

54. The verdict of the Hon'ble Supreme Court in ***“SBI v. S.N. Goyal” (2008) 2 SCC (L&S) 678***, explained the terms “substantial question of law” and had observed vide paragraph 13, which reads to the effect:-

“13. ... The word ‘substantial’ prefixed to ‘question of law’ does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. ‘Substantial questions of law’ means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the

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parties. ... any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. ... There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case.”

55. The verdict of the Hon’ble Supreme Court in “**Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mfg. Co. Ltd.**” [AIR 1962 SC 1314], had laid down vide paragraph 6 to the effect:-

“6. ... The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties”

56. The verdict of the Hon’ble Supreme Court in “**Vijay Kumar Talwar v. CIT**” (2011) 1 SCC 673 vide paragraph 21 thereof, had laid down to the effect:-

“21. ... ‘14. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be ‘substantial’ a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law ‘involving in the case’ there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. ... It will, therefore, depend on the facts and circumstance of each case whether a question of law is a

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substantial one ... or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.”

57. The verdict of the Hon’ble Supreme Court in **“Union of India Vs. Ibrahim Uddin and Another”** (supra) further observed vide paragraphs 62 & 63 thereof to the effect:-

“62. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

63. There may be a question, which may be a “question of fact”, “question of law”, “mixed question of fact and law” and “substantial question of law”. Question means anything inquired; an issue to be decided. The “question of fact” is whether a particular factual situation exists or not. A question of fact, in the realm of jurisprudence, has been explained as under:

“A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong.”

58. As laid down in **“Bibhabati Devi v. Kumar Ramendra Narayan Roy” [(1945-46) 73 IA 246 : AIR 1947 PC 19]**, the Privy Council had provided the guidelines as in what cases the second

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appeal can be entertained, explaining the provisions existing prior to the amendment of 1976, and had observed as under:-

“(4) ... That miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word ‘judicial procedure’ at all. That the violation of some principle of law or procedure must be such an erroneous proposition of law that if that proposition be corrected the finding cannot stand; or it may be the neglect of some principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the courts could arrive at their finding is such a question of law.

(5) That the question of admissibility of evidence is a proposition of law, but it must be such as to affect materially the finding. The question of the value of evidence is not a sufficient reason for departure from the practice.”

59. As has rightly been observed vide paragraph 52 hereinabove, the objects of Sarvapriya Cooperative House Building Society Ltd. i.e. the respondent no.2 to the present appeal do not bring forth that it falls within the domain of the Registrar of Delhi Co-operative Societies to adjudicate a dispute between the legal representatives of a deceased member who were not substituted in place of the deceased despite the initial allottee having paid the full consideration at the time of the allotment as per the previous rates of the land in question and thereby ousting the right of the legal representatives of the deceased member to seek allotment of the land in question and the said aspect does not in any manner relate to any dispute qua the constitution, management or business of the Society and thus, Sections 60 & 93 of the Delhi Co-

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operative Societies Act, 1972 do not bar the jurisdiction of the Civil Courts as has rightly been held by the First Appellate Court and in view of the objects of the respondent no.2, it is apparent that there is no substantial question of law as urged by the appellants that arises in the instant case.

60. It is also essential to observe that even in the verdict of the Hon'ble Supreme Court in ***"Bhanushali Housing Cooperative Society Ltd. Vs. Mangilal & Ors."*** (supra), the aspect of a dispute arising out of a contract for sale or purchase of immoveable property being amenable to adjudication in terms of Section 64 of the M.P. Co-operative Societies Act, 1960 was read in view of the objects of the Society and Articles of Association thereof.

61. In the instant case thus, as rightly held by the learned First Appellate Court that jurisdiction of the Civil Courts for determination of the rights of the legal representatives of the deceased member of the Co-operative Society to whom the plot of land had been allotted before her demise and who had paid the entire consideration for the same at the stage of allotment, though, the lease and sub-lease were not executed in her favour by the respondent no.3 herein i.e. the DDA, the aspect as to whether despite the entire payment of the consideration due for the allotment at the relevant time when the plot had been allotted, could be cancelled by the respondent no.3 herein to the present appeal i.e. the DDA at the behest of the respondent no.2 for alleged non-payment of the enhanced rate of the plot of land by legal representatives of the deceased member Smt.Dhan Devi Kapoor of the Society, coupled with the factum that there had been repeated

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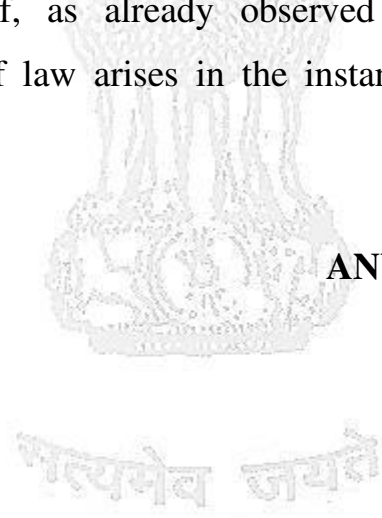
correspondence made by the legal representatives of the deceased member to the respondent no.2-Society communicating of her demise to the respondent no.2, coupled with the factum also that the legal representatives of the deceased member of the respondent no.2 have also communicated to the respondent no.2-Society that they were willing to make the payment of the enhanced rate of the plot of land, it is apparent thus, that these are the aspects which cannot be determined within the ambit of the Delhi Co-operative Societies Act, 1972 by the Registrar of Delhi Co-operative Societies and thus the jurisdiction of the Civil Courts cannot be held to be barred in terms of Section 60 and Section 93 of the Delhi Cooperative Societies Act, 1972.

62. In view thereof, as already observed hereinabove, as no substantial question of law arises in the instant case, the appeal is dismissed.

ANU MALHOTRA, J.

AUGUST 4, 2021

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