

\$~60(Appellate)

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

+ CM(M) 1130/2022 & CM APPL. 45564/2022, CM APPL.
45565/2022

DLF LTD.

..... Petitioner

Through: Mr. Pinaki Mishra, Sr.
Advocate along with Mr.
Ravinder Narain, Mr. Pravin
Bahadur, Ms. Seema Sundd,
Mr. Aditya P.N. Singh, Mr.
Rituraj Srivastava, Mr.
Abhishek S., Mr. Siddharth
Banthia, Ms. Kanika Gomber
and Mr. Amit Aggarwal,
Advocates.

versus

ALKA GUPTA

.... Respondent

Through: Mr. M.L. Lahoty, Mr. Anchit
Sripat and Mr. Pranab K.
Nayak, Advocate.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

% **19.10.2022**

1. A Consumer Complaint Case no. 221/2013 stands instituted before the learned National Consumer Disputes Redressal Commission ("the learned NCDRC") by the respondent Alka Gupta, raising grievances in respect of a flat in a housing project which was allotted to her along with her husband, Vikas Gupta.

2. The impugned order dated 2nd August, 2022, passed by the learned NCDRC, allowed IA No. 6581/2022, whereby the respondent Alka Gupta sought to place on record an affidavit of her husband Vikas Gupta, being the joint allottee of the aforesaid apartment, whereby Vikas Gupta ceded complete authority to prosecute and pursue the consumer complaint to his wife Alka Gupta individually.

3. Mr. Pinaki Mishra, learned senior counsel for the petitioner submits that the impugned order is completely arbitrary. He submits that, under the provisions of the Consumer Protection Act where the flat is jointly allotted to two persons, the complaint has to be filed jointly by them. He submits that the maintainability of the complaint, as individually instituted by Alka Gupta, despite the fact that the flat was jointly allotted to her with her husband, has been contested by the petitioner before the learned NCDRC. The affidavit of Vikas Gupta, which was being sought to be brought on record by IA No. 6581/2022, submits Mr. Mishra, was in the nature of an attempt to overcome the basic objection of the respondent to the maintainability of the complaint. Mr. Mishra also takes exception to the observation of the learned NCDRC, in the impugned order, rejecting the submission of the petitioner to the effect that the complaint was liable to be dismissed as having been filed by Alka Gupta alone. The learned NCDRC has observed that this objection could not be made the sole ground of rejection of the complaint which has been pending for nearly 10 years.

4. A perusal of IA 6581/2022, filed by the respondent, Alka

Gupta, reveals that the only prayer in the complaint is for taking on record the affidavit of her husband Vikas Gupta.

5. To the extent that the respondent seeks to place, on record in the proceedings before the learned NCDRC, the affidavit of her husband, Vikas Gupta, I do not see that any case exists for interdiction by this court under Article 227 of the Constitution of India.

6. However, the objections raised by Mr. Mishra, which have already been maintainable before the learned NCDRC deserves to be considered on merits. The rejection in the impugned order, of the objection, by the petitioner regarding the maintainability of the application, is non-speaking. To that extent, the impugned order is set aside.

7. The objection of the petitioner, regarding the maintainability of the complaint, as instituted before the learned NCDRC shall remain open to be agitated by the petitioner in the proceedings pending before it. Needless to say, the respondent would also be within her rights in defending the maintainability of the complaint. All contentions of both the sides shall remain open to be agitated before the learned NCDRC.

8. The taking on record of the affidavit of Vikas Gupta shall not, therefore, be regarded as any expression of opinion by the Court on the contents of the affidavit or on whether Vikas Gupta was entitled in law to authorise his wife Alka Gupta to maintain the consumer complaint in an individual capacity. This aspect would have to be

considered by the learned NCDRC on merits.

9. To allay all apprehensions, it is clarified yet again that the present order merely permits the taking on record of the affidavit of Vikas Gupta, with no expression of opinion regarding the contents of the affidavits or the objection raised by the petitioner regarding the maintainability of the consumer complaint. Needless to say all objections regarding maintainability and merits of the consumer complaint instituted by the respondent are left open to be urged before the learned NCDRC.

10. The petition is accordingly dismissed. Pending applications, if any, also dismissed.

11. *Dasti.*

C.HARI SHANKAR, J

OCTOBER 19, 2022/hk