

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CWP-6364-2017 (O&M)
Date of Decision:- 29.08.2023

Tejinder Singh

... Petitioner

Versus

U.T. of Chandigarh through Secretary
Cooperation and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Harparteek Singh Sandhu, Advocate, for the petitioner.

None for respondents No.1 and 2.

Mr. Dhiraj Chawla, Advocate, for respondents No.3 and 4.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 30.9.2016 (Annexure P-8) passed by Additional Registrar, Cooperative Societies, U.T. (respondent No.2) whereby a petition filed by the petitioner under Section 55/56 of the Punjab Cooperative Societies Act, 1961 challenging resolution No.2 dated 9.3.2015 directing recovery of a sum of Rs.10,47,467/- along with interest @ 9% has been dismissed. The petitioner also assails order dated 28.2.2017 (Annexure P-9) passed by the appellate authority i.e. Secretary Cooperation, U.T.

Chandigarh vide which the appeal challenging aforesaid order dated 30.9.2016 (Annexure P-8) has been dismissed.

2. A few facts necessary to notice are that one Rajinder Singh had filed a complaint in District Consumer Disputes Redressal Forum-I, U.T. Chandigarh, against respondent No.3 i.e. Industrialists Cooperative House Building First Society Ltd. and against the President of the said society and also against Tejinder Singh, President (by name) seeking compensation on account of causing delay in handing over possession of a flat which had originally been allotted to Sudhir Kumar Jain who had executed a WILL in favour of Rajinder Singh. The District Consumer Forum accepted the complaint vide order dated 03.11.2008 (Annexure P-1). The operative portion of the said order reads as under:

“ 12. In view of above discussion, we are of the opinion that the present complaint must succeed. The same accordingly allowed with the following directions:-

- i) The OPs shall refund a sum of Rs.94,740/- to the complainant which they received from him as interest and maintenance charges;
- ii) OP No.3- Tejinder Singh shall pay Rs.79,240/- towards interest to OP No.1 Society;
- iii) OPs No.1 & 2 would be free to recover the amount of Rs.15,500/- as maintenance charges from OP No.3- Tejinder Singh, if they so like;
- iv) OPs shall jointly & severally pay Rs.3,50,000/- to the complainant for loss of rent, which OPs No.1 & 2 may recover from OP No.3;

- v) OP No.3-Tejinder Singh shall pay damages to the tune of Rs.50,000/- to the complainant for causing him mental & Physical harassment.
- vi) OPs shall jointly & severally pay to the complainant Rs.5500/- as cost of litigation.”

3. Although, a joint appeal was filed by the society, its President and Tejinder Singh before the State Consumer Disputes Redressal Commission, U.T. Chandigarh, but the same was dismissed by the State Commission vide its judgment dated 16.4.2009 (Annexure P-2). The society, its President as well as the petitioner preferred a joint revision before the National Consumer Disputes Redressal Commission, which was partly allowed vide order dated 05.12.2014 (Annexure P-4) to a very limited extent in the following terms:

“After arguments it has been agreed between the petitioner No.1 and the respondent that the interest awarded by the State Commission may be reduced from 12% p.a. to 9% p.a.. Ordered accordingly. The revision petition stands disposed of. It is made clear that the petitioner No.1-Society can avail such remedy, if any, as may be available to it in law against petitioner No.3. ”

4. The petitioner and others also moved an application seeking clarification of order dated 05.12.2014, but the application was dismissed while observing that the applicants, if advised, may file appropriate review petition. However, no such review petition was filed. Pursuant to the decision of the District Consumer Forum, Chandigarh, having attained finality, a resolution dated 09.03.2015 (Annexure P-5) was passed by respondent No.1 i.e. the society for recovery of an amount of Rs.10,47,467/- upto 28.2.2015 along with interest @ 9% p.a. from the petitioner. The petitioner challenged the said resolution by way of filing a petition under Section 55/56 of Punjab Cooperative Societies Act, 1961 before Additional Registrar Cooperative

Societies U.T. Chandigarh. However, it was held therein that the socety had raised a legitimate demand against the petitioner and that the society was free to recover the amount barring the litigation cost which was modified to Rs.50,500/- vide order dated 30.9.2016 (Annexure P-8).

5. The petitioner preferred an appeal in terms of Section 68 of Cooperative Societies Act to Secretary Cooperation, U.T. Chandigarh challenging order dated 30.9.2016 but the Appellate Authority, finding no merit in the appeal dismissed the same vide its order dated 28.2.2017 (Annexure P-9). Aggrieved by the aforesaid orders, the instant petition has been filed.
6. Learned counsel for the petitioner submitted that the resolution dated 9.3.2015 (Annexure P-5) wherein it was resolved to initiate recovery proceedings against the petitioner was passed without framing any appropriate agenda and without intimating the petitioner and as such deserves to be set aside and that even the Additional Registrar Cooperative Societies has not applied its mind and has dismissed the petition filed by petitioner under Section 55/56 of Cooperative Societies Act and that in a similar manner the Appellate Authority has erroneously dismissed the appeal filed by the petitioner. Learned counsel for the petitioner has vehemently argued that in ground No.4(B) of the Grounds of Revision filed by respondent No.3 before the National Consumer Disputes Redressal Commission, it has specifically been admitted that the delay in transfer of share of Sudhir Kumar Jain in favour of Rajinder Singh on the basis of WILL was on account of a delay in decision by the Additional Registrar Cooperative Societies and that the same clearly goes to show that the petitioner who had remained a President admittedly was not responsible for the delay.

7. Opposing the petition, learned State counsel representing respondents No.3 and 4 submitted that in the present case it was pursuant to the orders passed by the District Consumer Forum upheld upto National Consumer Disputes Redressal Commission, that a resolution was passed for effecting recovery against the petitioner and that in such an eventuality there was no requirement for fresh initiation of any kind of departmental proceedings as petitioner was a party in said litigation.
8. This Court has considered the rival submissions.
9. The District Consumer Forum in its Award dated 3.11.2008 (Annexure P-1), while holding the petitioner personally responsible to pay the interest component of Rs.79,240/- had further ordered that the amount of Rs.3,50,000/- be paid to the complainant for loss of rent which could be recovered by him jointly and severally from all the three i.e. the society, its President and petitioner-Tejinder Singh. Petitioner-Tejinder Singh was individually fastened with another liability of Rs.50,000/- for causing mental and physical harassment to the complainant. Still further while holding all the three i.e. the society, its President and Tejinder Singh jointly and severally liable to pay an amount of Rs.3.50,000/-, it was made clear that the society and its President otherwise are free to avail remedy, as may be available against Tejinder Singh. The matter having been adjudicated upto National Consumer Forum, the findings contrary to the findings as returned by the District Consumer Forum specially against the petitioner and upheld by National Consumer Forum were not warranted.
10. Having regard to the aforesaid position, this Court is of the considered view that the findings of District Consumer Forum having attained finality upto

National Consumer Forum, a resolution dated 9.3.2015 (Annexure P-5) directing recovery of the amount in question from the petitioner was perfectly justified as he was primarily responsible for causing delay. The order passed by Additional Registrar Cooperative Societies (Annexure P-8) as upheld by Secretary Cooperation, U.T. Chandigarh (Annexure P-9) is the consequential effect flowing from the findings of the District Consumer Forum upheld upto the National Consumer Forum.

11. While the impugned orders are upheld in so far as they pertain to effecting recovery from Tejinder Singh, who was primarily responsible for the delay but at the same time, it is also noticed that Office of Registrar Cooperative Societies, U.T. Chandigarh has also, to some extent, contributed towards the delay. The relevant extracts from order of the District Consumer Forum dated 03.11.2008 wherein the manner in which the file was dealt with has been noticed are reproduced hereunder:

“6. A perusal of the record shows that the transfer of flat was delayed and the complainant was harassed due to the illegal action on the part of OP No.3-Tejinder Singh, acting as president of OP NO.1 Society.Even before the allotment of the flat, Sh. Sudhir Kumar Jain executed a Will Annexure C-2 on 03.12.2002. Tejinder Singh-OP No.3 is an attesting witness of this Will, which is not disputed. It is admitted in Para No.4 of written reply and affidavit of Tejinder Singh that the complainant had approached the Managing Committee of Society and the society was in a fix as there were two claimants to the share of deceased Shri Sudhir Jain, one was the nominee and the other was the GPA, so the managing committee of the society wrote letter dated 6.8.2004 to Registrar, Cooperative Societies, U.T., Chandigarh. It may be mentioned that though Tejinder Singh himself was an attesting witness to the registered Will

in favour of the complainant-Rajinder Singh, who had approached them for transfer of flat in his favour but he did not mention in this letter dated 6.8.2004 anything about the Will. The only thing mentioned by him is that Rajinder Singh is the claimant of G.P.A. holder of Late Mr. Sudhir Kumar Jain. Tejinder Singh misled the Registrar, Cooperative Societies, Chandigarh about the execution of the Will and wrongly transferred the flat in favour of Mrs. Sudha Jain, who was originally mentioned by Sh.sudhir Kumar Jain as his nominee at the time when he became member of the OP Society.

7. When the OPs failed to transfer the flat/share in his favour, the complainant had to write a letter dated 19.7.2006 to the Assistant Registrar, Cooperative Societies, Chandigarh. The OPs sent report Annexure C-12 a month later on 5.12.2006 opposing the request of the complainant. The Registrar, Cooperative Societies, Chandigarh, however, did not agree with this reasoning of the OPs and approved the transfer of the flat in favour of the complainant vide Annexure C-13, dated 9.7.2007. It was thereafter that the complainant got the flat transferred on 20.8.2007 after wasting more than three years. The entire delay in the transfer was caused by the OPs particularly Tejinder Singh - OP No.3 acting as President of OP No. 1 Society.

(Emphasis Supplied)”

12. The aforesaid extracts clearly show that while it is the petitioner who was instrumental in creating hurdles for transfer of flat and had suppressed the material facts when the matter was referred to the Office of Registrar, Cooperative Societies, which was referred somewhere in the year 2004, but the matter remained pending for a good 3 years in the office of Registrar, Cooperative Societies, before any decision was taken in favour of

respondent-Rajinder Singh. In other words the entire delay cannot be attributed to petitioner-Tejinder Singh, though it was triggered on account of motivated conduct of Tejinder Singh.

13. As such, it is ordered that out of the component of 3.5 lakhs as awarded by learned District Consumer Forum in para 12(iv) of Award dated 3.11.2008 (Annexure P-1), the respondent would be entitled to recover the same to the extent of 60% only alongwith interest. However, recovery qua the balance 40% (out of Rs.3,50,000/-) shall not be effected. Recovery qua other heads shall remain unaltered and may be effected as deemed appropriate.
14. The petition, as such, is disposed off while clarifying that recovery may be effected but limited to the extent indicated above.

29.08.2023
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No