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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 3985/2023****RAKESH GUPTA**

..... Petitioner

Through: Mr. Sachin Mittal, Advocate
(Through VC) with Mr. Satyam Arora, Advocate

versus

UNION OF INDIA THROUGH ITS**SECRETARY & ORS.**

..... Respondents

Through: Mr. Vikrant N. Goyal and Mr. Nitin Chandra, Advs. for R1.
Mr. Dipak K. Nag, Ms. Apurva Upmanyu and Ms. Aparna Vishal, Advocates for R2.
Ms. Kirti Mewar and Ms. Esha Shonak, Advs. for R3.

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Date of Decision: 27th February, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMOHAN, ACJ: (ORAL)****W.P.(C) 3985/2023 & CM APPL. 64390/2023**

1. This application has been filed by Respondent No. 2 seeking dismissal of the writ petition on the ground that the Petitioner has suppressed the fact, as regards the prior filing of an arbitration petition before the Registrar Co-operative Societies ('RCS') under Section 84 of the Multi-State Co-Operative Societies Act, 2002 ('MSCS Act'), on or around 20th September, 2022, seeking similar reliefs on identical allegations against Respondent Nos. 2 and 3 herein.



2. Learned counsel for the Respondent No. 2 states that the fact of the prior filing of the arbitration petition was concealed and not disclosed in the mandatory non-filing clause of the writ petition at paragraph 10. He states that the arbitration petition is dated 20th September, 2022 and the writ petition is dated 11th March, 2023.

2.1. He states that, notwithstanding the issue of concealment, since the Petitioner has availed the alternative remedy of statutory arbitration under Section 84 of the MSCS Act, the present writ petition is even otherwise not maintainable.

3. In reply, learned counsel for the Petitioner states that he admits that a petition invoking statutory arbitration has been filed with the RCS. He states that the said arbitration petition was filed by the Petitioner without appreciating that the reliefs sought against Respondent No. 3 are not arbitrable. He states that the Petitioner has now filed an appropriate application under Section 23 of the Arbitration and Conciliation Act, 1996 in the arbitration proceedings, for amending the said petition and withdrawing the reliefs sought against Respondent Nos. 2 and 3 in the present proceedings. He states that non-disclosure of the filing of the arbitration proceedings in the writ petition was unintentional as the Petitioner was not aware of his responsibility to make the said disclosure.

4. We have heard the learned counsels for the parties and perused the record.

5. The rules require that in the writ petition, a petitioner shall mandatorily disclose the pendency of any other proceedings on the subject matter. The Petitioner herein to comply with the said rule made the following disclosure in the writ petition filed on 11th March, 2023, duly



affirmed with an affidavit:

“10. That no other petition has been filed by the petitioner on the subject matter in any other Court.”

6. The Respondent No. 2 has annexed with this application a copy of the arbitration petition dated 20th September, 2022 filed by the Petitioner under Section 84 of the MSCS Act. Respondent Nos. 2 and 3 herein are arrayed as Respondent Nos. 1 and 12 therein. The prayers sought in the present petition correspond to prayers (vi) and (ix) of the arbitration petition. The Petitioner admits that the allegations raised in the writ petition are similar and near identical with the allegations made in the arbitration petition.

7. The Petitioner has thus, approached this Court in the writ petition for identical reliefs on same allegations, after having already invoked the statutory arbitration on the same subject matter. However, the Petitioner failed to disclose this material fact in the writ petition and infact stated to be contrary in paragraph 10 as noted above. Further, after this fact (of concealment) was brought on record by the Respondent No. 2 by filing the present application, i.e., CM APPL. 64390/2023; the Petitioner sought to overcome the said suppression by seeking to amend the arbitration petition. The said attempt at amendment is clearly a subterfuge and an afterthought to overcome the present application. However, the fact remains that the arbitration petition continues to remain pending till date and was not disclosed at the first instance. The Petitioner is thus, pursuing two parallel proceedings for the same relief against the same party which is impermissible.

8. We are of the considered opinion that the Petitioner has approached this Court with unclean hands and has wilfully suppressed the material fact



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of prior filing of the arbitration petition.

9. The present application filed by the Respondent No. 2 is allowed and the writ petition is dismissed on account of wilful suppression.

10. Pending applications stand dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 27, 2024/hp/sk

Click here to check corrigendum, if any