



2024:DHC:5338



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

+ W.P.(C) 2328/2020, CM APPL. 8182/2020, CM APPL. 8959/2020, CM APPL. 29480/2020, CM APPL. 521/2021, CM APPL. 27032/2022, CM APPL. 28702/2022, CM APPL. 31479/2023 & CM APPL. 35870/2023

SH. RAKESH KUMAR SHARMA

..... Petitioner

Through: Mr. Gaurav Sarin, Ms. Ayushi Sharma and Mr. Rakesh Kr. Sharma, Advocates along with petitioner in person (M:9868264127)

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Anish Dhingra, Advocate with Mr. Rupinder Oberoi Dhingra, Mr. Nakul Ahuja and Mr. Pankaj Tomar, Advocates for DDA.
M: 9818266660
Email: advdhingra@gmail.com**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****19.07.2024****MINI PUSHKARNA, J:**

1. The present petition has been filed, *inter alia*, challenging the action of the respondent-Delhi Development Authority ("DDA") in cancelling the allotment of flat in favour of the petitioner, despite full payment having been made by the petitioner, at a later stage, for the flat in question, with further



prayer for condoning the delay in making payment towards the allotted flat.

2. The case, as canvassed by the petitioner in the petition, is as follows:

2.1 Aunt of the petitioner, i.e., Smt. Amba Rani, was allotted MIG flat bearing No. 35-B, Pocket-C, Jhilmil, Delhi, by the DDA, vide demand letter dated 17th March, 1993, at a total cost of ₹ 3,55,000/- on cash down basis, after adjustment of the registration amount and interest accrued thereon. The said amount was to be paid on or before 15th June, 1993.

2.2 As the demand raised in the said letter was in excess of the amount initially advertised in the brochure, i.e., ₹ 42,000/-, Smt. Amba Rani challenged the same, by filing a suit for permanent injunction before the Senior Sub Judge, Delhi, *inter alia*, praying as under:

“xxx xxx xxx

"Pass a decree of permanent injunction restraining the defendant authority, its officers, agents and employees, etc. not to enforce any demand in excess of Rs.42,000/- in respect of the flat allotted to the plaintiff, bearing No.35-B, Phasse-II, Jhilmil, Delhi or to enforce the demand of "cash down payment" and further restrain them from automatic cancellation in respect of the said flat and further restrain them from making any demand, which is not borne out by the brochure issued by the Defendant authority at the publication of scheme."

xxx xxx xxx”

2.3 While issuing notice in the suit, the learned Civil Judge granted stay of cancellation of the allotment, pending disposal of the suit.

2.4 During the pendency of the aforesaid suit, the said Smt. Amba Rani, on her own, deposited the full amount, i.e., ₹ 3,49,794/-, on 9th September, 1997, when the stay against cancellation of allotment, was still in operation. Thereafter, vide letter dated 5th April, 1998 and 13th April, 1999, Smt. Amba Rani requested the DDA to give her possession of the flat, as she had deposited the full demanded amount. Letter in this regard was also written



by Smt. Amba Rani to Deputy Director (Housing), which was duly received by DDA vide Dairy No. 5656 dated 26th August, 1999, wherein, she mentioned the fact of deposit of full cost of flat by her, thereby requesting that the same may not be allotted to anyone else.

2.5 Subsequently, the suit filed by Smt. Amba Rani was dismissed in default on 8th September, 1997. Upon an application moved on her behalf, the suit was restored to its original number. The statement of learned counsel appearing for Smt. Amba Rani was also recorded in the said order dated 6th March, 2000 that full amount as per demand notice of DDA had been deposited. Thus, the learned Civil Judge directed the Junior Law Officer (“JLO”) of the DDA, who was present in Court, to issue a demand notice regarding interest and other charges to Smt. Amba Rani, on or before the next date.

2.6 Thereafter, Smt. Amba Rani received a letter dated 25th May, 2000 from the Assistant Director (MIG), asking the petitioner to meet him on any Monday or Thursday between 2:30 to 5:30 PM. Since the husband of the petitioner was unwell, she did not attend the office of DDA at that time. Subsequently, she appeared before the Assistant Director, DDA on 22nd March, 2001, when no reply was received from the DDA. She again visited the DDA office on 13th May, 2002. Since no follow up action was taken up by the DDA, Smt. Amba Rani made a representation dated 27th May, 2002, to the Deputy Director (Housing), DDA.

2.7 Subsequently, other representations dated 4th October, 2002, 23rd July, 2003 and 27th October, 2004, were submitted to the DDA. Smt. Amba Rani also visited DDA along with her husband on 11th October, 2004 and met with the Deputy Director (Housing), requesting him to issue allotment letter.



2.8 Since the DDA was not responding to the request of Smt. Amba Rani, she filed a writ petition before this Court, which was dismissed as withdrawn on 7th October, 2015, with liberty to move an appropriate application in the suit filed by Smt. Amba Rani.

2.9 Smt. Amba Rani lastly visited Delhi in the year 2015 and met the Vice Chairman, DDA on 29th June, 2015. She came to know that the flat allotted in her favour, had already been cancelled. Thus, Smt. Amba Rani requested the Vice Chairman, DDA to allot her another vacant flat, i.e., Flat No. D-6/6040/1, Vasant Kunj, New Delhi.

2.10 In the meanwhile, the civil suit filed by Smt. Amba Rani was dismissed for non-prosecution.

2.11 Smt. Amba Rani expired on 16th July, 2017, leaving behind a will dated 17th April, 2016 in favour of the petitioner. When petitioner herein came to know about the will, he filed a probate case and probate was granted on 15th January, 2020. Thus, the present petition has been filed on behalf of the petitioner.

3. Learned counsel appearing for the petitioner has made the following submissions:

3.1 The order dated 6th March, 2000, by which directions had been issued to the DDA to issue a demand notice regarding interest and other charges to the petitioner, was in the nature of a final direction to the DDA to issue a demand notice. The petitioner had already deposited the full amount of the flat on 9th September, 1997, as per the demand of DDA.

3.2 This Court vide order dated 7th January, 2021 had passed interim directions in favour of the petitioner to maintain *status quo* apropos flat no. D-6/6040/1, Vasant Kunj, New Delhi. Further, when Smt. Amba Rani had



met the VC, DDA, he had marked the case to Commissioner (Housing) for seeing and considering the case of Smt. Amba Rani for allotment of flat no. D-6/6040/1, Vasant Kunj, New Delhi. Attention of this Court has been drawn to *Annexure P-21* attached with the present petition.

3.3 Learned counsel appearing for the petitioner has also drawn the attention of this Court to the departmental file of the DDA, which was produced before this Court and learned counsel appearing for the petitioner was allowed to inspect the same. By referring to the documents in the departmental file, it is submitted that till the date of receipt of payment by the DDA, the flat allotted in favour of Smt. Amba Rani, had still not been cancelled. By relying upon the departmental file, learned counsel appearing for the petitioner submits that the aforesaid flat in Vasant Kunj, has remained reserved and not been allotted to anyone.

4. Per contra, learned counsel appearing for the respondent-DDA has raised the following submissions:

4.1 The Civil suit filed by the original allottee, i.e., Smt. Amba Rani was dismissed for non-prosecution. Thereafter, the appeal filed by the said Smt. Amba Rani was also dismissed for non-prosecution.

4.2 Smt. Amba Rani had filed a writ petition bearing *W.P.(C) No. 20036/2005*, however, the same was dismissed as withdrawn. The said writ petition was not entertained by this Court, as the original allottee, i.e., Smt. Amba Rani, had already taken recourse of filing a civil suit.

4.3 The original allottee had deposited the demanded amount in the year 1997, which is clearly beyond the stipulated time, as the amount was to be deposited by the original allottee on or before 15th June, 1993.

4.4 The allotment of the flat was already cancelled in the year 1993. The



demand-cum-allotment letter consisted of an automatic cancellation, if the demand is not paid within the stipulated time, i.e., by 15th June, 1993. Thus, the present writ petition is liable to be dismissed on the ground of delay and laches.

4.5 Since allotment of Smt. Amba Rani had already been cancelled, the petitioner has no right of asking for allotment of any flat of his choice. There is no policy in the DDA to allow any allottee to choose his desired flat.

4.6 The suit as well as the appeal filed on behalf of Smt. Amba Rani, have already been dismissed. Instead of taking appropriate remedy for restoring the appeal, Smt. Amba Rani again approached this Court by filing a writ petition being *W.P.(C) No. 20036/2005*. However, the same was not entertained and was dismissed as withdrawn. Thus, there are no orders in favour of the petitioner with regard to allotment of the flat in question.

4.7 The original allottee had deposited the amount for the flat only in the year 1997, beyond the stipulated time. Thus, the allotment in favour of the original allottee, was automatically cancelled.

5. I have heard learned counsels for the parties and have perused the record, including the departmental file of the DDA, as produced before this Court.

6. It is to be noted that the departmental file of the DDA, has also been perused by Mr. Gaurav Sarin, learned counsel appearing for the petitioner, with assistance from the petitioner, under directions of this Court.

7. Learned counsel for the respondent has addressed his arguments, after perusing the said departmental file of the DDA.

8. At the outset, this Court notes that Smt. Amba Rani, being a registrant under the New Pattern Registration Scheme ("NPRS"), 1979, was declared



successful for allotment of MIG Flat bearing no. 35B, First Floor, Pocket C, Jhilmil, New Delhi in the draw held on 25th February, 1993, on cash down basis. In terms of the demand-cum-allotment letter, the allottee was required to make the payment of the demanded amount within the stipulated period, i.e., 15th June, 1993. The demand-cum-allotment letter stipulated in clear terms about the condition for automatic cancellation of allotment after 15th June, 1993.

9. The said allottee, i.e., Smt. Amba Rani was aware of the said stipulation regarding automatic cancellation, in case payment was not made within the stipulated period, in terms of the allotment letter. Thus, in the suit filed by her, the following averments were made:

“xxx xxx xxx

12. That notwithstanding the aforesaid representation as held out in the Brochure issued by defendant, plaintiff has received a demand in the sum of Rs.3,55,000/- and a sum of Rs.90,200/- in consideration of continued enjoyment of property on account of ground rent beyond two years at the rates indicated in its demand Notice bearing distinctive No. MO 36(108)93/JM/NP (received on or about 25.3.93) draw held on 25.2.93. The said notice, inter-alia intimated that plaintiff had been declared successful for allotment of a flat as detailed therein on the basis of draw held on 25.2.93. The flat in question bears No. PHII PKT C FLT 35 B, Jhilmil, Delhi. The said notice further desired payment by v/ay of "CASH DOWN" notwithstanding a representation to the contrary as submitted herein above.

13. That plaintiff was shocked to receive the allotment letter and the terms of payment stipulated therein with a penal provision incorporated therein to the effect that in the event of failure of the payment referred to in para 12 above, the allotment is liable to "AUTOMATIC CANCELLATION after 15.6.93"

xxx xxx xxx”

(Emphasis Supplied)

10. Thus, in view of the payment having not been made within the



stipulated period, there was automatic cancellation of allotment in terms of the said demand letter issued by the DDA.

11. It is not a case where the original allottee requested the DDA for extension of time for making the payment, or any extension of time was granted by the DDA. Thus, upon the expiry of the period granted by the DDA for making the payment towards allotment of flat, in the absence of the payment by the allottee, the said allotment automatically stood cancelled.

12. Holding that the term as to payment as per schedule, must be held to be mandatory and the stipulation of automatic cancellation of allotment in case of default in payment, has to be sustained, this Court in the case of ***Asha N. Madnani Versus Delhi Development Authority and Others, 1996 SCC OnLine Del 842***, has held as follows:

“xxx xxx xxx

*10. A distinction has to be drawn between the consequence flowing from the default in payment by the allottee in accordance with the terms and conditions of allotment and a default merely in furnishing proof of payments and filing of the documents within the prescribed period. The letter of allotment provides for automatic cancellation of the allotment in both the cases. **In the case of default in payment of installments automatic cancellation of allotment has to be sustained because of the consequences flowing therefrom.***

*10.1. **Each allotment is part of a composite scheme. By default in payment the working of the scheme is disturbed and the DDA has to rearrange its financial affairs. An allottee defaulting in payment must give way to an aspirant waiting for an allotment and willing to make payment.***

10.2. In case of a mere default in filing of the documents (having no material bearing or eligibility or qualification for allotment) and proof of payments within the prescribed period the considerations are different. Even the respondent-DDA is aware of the payment having been made. It is merely a question of convenience that allottee is required to furnish



proof of payment so that collective information as to payments is available at one place and the DDA is not required to scan its records time and again in respect of each allottee. Having made the payments—all and in time—it is primarily the allottee who suffers by his failure to furnish the documents and proof of payments. Execution of lease and delivery of possession to the allottee would be delayed inspite of his having parted with money and the flat lying ready for delivery of possession. Situation may be different if third party interest or any other similar factor has intervened which would render it inequitable or impossible to accommodate the allottee on his original allotment.

10.3. Therefore, the term as to payment as per schedule must be held to be mandatory while the term as to submission of all the relevant documents alongwith proof of payment within the prescribed period should be held to be directory.

xxx xxx xxx”

(Emphasis Supplied)

13. Likewise, holding that if an allottee fails to deposit the requisite amount within the stipulated time, the allotment stands automatically cancelled, in the case of ***Ms. B. Hawari Devi Versus Delhi Development Authority, 2013 SCC OnLine Del 1823***, it has been held, as follows:

“xxx xxx xxx

5. *It is not in dispute that the Demand-cum-Allotment Letter dated 5.2.1990 was duly received by the petitioner. She was required to deposit the amount of Rs. 5274.75 within six months from the due date, failing which the allotment was to stand automatically cancelled. Admittedly, the petitioner did not deposit the aforesaid amount within six months from the due date. **Accordingly, the cancellation clause contained in the Allotment Letter became operative and the allotment made to the petitioner stood automatically cancelled.***

6. *The learned counsel for the petitioner submits that since the aforesaid amount was deposited by the petitioner within 15 days of the show cause notice dated 15.6.1993, the allotment could not have been cancelled by DDA. I, however, find no merit in the contention. A perusal of the show cause notice would show that no time was granted to the petitioner, vide that notice, to deposit the amount which DDA had demanded, vide Demand-cum-Allotment Letter dated 5.2.1990. It was clearly stated in the show cause notice that the petitioner had failed to deposit the*



aforsaid amount in terms of the Demand-cum-Allotment Letter dated 5.2.1990. The purpose of giving show cause notice to the allottee in such a case is to enable him to satisfy DDA, in case that was the factual position, that the amount demanded in the Demand-cum-Allotment Letter was actually deposited by him within the time stipulated in the said letter and, therefore, there was no ground for cancelling the allotment. The show cause notice does not give yet another opportunity to the allottee to deposit the amount demanded vide Demand-cum-Allotment Letter, in a case where the allotment stood cancelled on account of failure of the allottee to deposit the amount demanded from him, within the time stipulated by DDA in this regard.

7. Once the allottee fails to deposit the balance land premium within the time stipulated in the Demand-cum-Allotment Letter, the offer made to him by DDA stands automatically withdrawn and the allotment made to him stands automatically cancelled. Thereafter, the allottee cannot make payment at a date beyond the last date stipulated in the Demand Letter and then seek continuance of the allotment on the basis of such a payment.....

xxx xxx xxx”

(Emphasis Supplied)

14. Thus, the position of law is clear that a cancellation clause contained in the allotment letter, will become operative and allotment will stand automatically cancelled, in case of non-payment of due amounts within the stipulated period. It is undisputed that in the present case, while the demand-cum-allotment letter was issued by the DDA on 17th March, 1993, the requisite amount was deposited by the original allottee only on 09th September, 1997. Therefore, the allotment in favour of the original allottee was automatically cancelled, in the absence of deposit of the requisite amount within the stipulated period of time, i.e., by 15th June, 1993. Therefore, the contention by learned counsel appearing for the petitioner that there was no cancellation of the allotment by the DDA till the payment of the requisite amount by the petitioner in the year 1997, cannot be accepted. The cancellation came into effect automatically upon non-payment of the



amount by 15th June, 1993.

15. The submission by the petitioner in the petition is ambiguous as regards the date on which stay on cancellation was granted by the learned Trial Court in the suit filed by Smt. Amba Rani. However, learned counsel appearing for the DDA has handed over the original certified copy of the order dated 05th November, 1993, to submit that the stay was granted in favour of the original allottee only in November, 1993, whereas, the allotment stood automatically cancelled on 15th June, 1993. Thus, no benefit can be sought to be drawn by the petitioner from the fact of deposit of the amount subsequently, after a period of more than four years, from the date when the amount was actually to be deposited, in terms of the demand letter. Stay in favour of the original allottee granted in November, 1993, against cancellation is of no consequence, when automatic cancellation had already taken place in June, 1993.

16. It is to be noted that the suit filed by the original allottee, i.e., Smt. Amba Rani challenging the amount demanded by the DDA, was initially dismissed in default, vide order dated 08th September, 1997, which reads as under:

“Amba Rani Vs. D.D.A.

8.9.1997

None is present on behalf of plaintiff since morning despite several calls. Hence dismissed in default.

Consigned to RR.”

17. This Court notes that, the said suit was subsequently restored to its original number vide order dated 06th March, 2000, and ultimately dismissed vide judgment dated 15th March, 2007, as the said Smt. Amba Rani, the



original allottee, did not lead any evidence. This fact is manifest from the appeal filed on behalf of Smt. Amba Rani, relevant portion of which, reads as under:

“xxx xxx xxx

1. That the appellant is filing the present appeal against the impugned order dated 15th March, 2007 passed in Suit No. 105/06 by the Hon'ble Court of Sh. J.P. Narayan, Civil Judge, Delhi.

2. That the brief facts leading to the filing of the present appeal are that the plaintiff/appellant has filed a suit for permanent injunction restraining the defendant/respondent from cancelling the flat allotted to the plaintiff/appellant at Jhilmil for non payment of the excess demand as raised by the defendant/respondent.

xxx xxx xxx

5. That the plaintiff/appellant residing near Indo Pak Border in Kashmir and being an old lady and ill health could not attend the dates regularly and the suit was finally dismissed as the plaintiff/appellant was not able to lead her evidence vide judgment of the court dated 15th March, 2007. It is submitted that the application under Section 151 of CPC was filed before the passing of the judgment and the Hon'ble Judge has pleased to issue notice on the said application, keeping in view of the nature of dispute or knowing fully well that the suit is disposed off before the disposal of the said application.

6. That the Hon'ble Trial Court without appreciating the hardships of the plaintiff/appellant and the facts of the present case dismissed the application in mechanical manner that too with costs vide its order dated 05th March, 2009. The impugned order is unjustified, illegal against the facts of the case and the same is liable to be set-aside.

xxx xxx xxx”

(Emphasis Supplied)

18. Subsequently, the aforesaid appeal filed by Smt. Amba Rani, was dismissed in default, vide order dated 26th October, 2015, which is reproduced as below:

“xxx xxx xxx



2024:DHC:5338



*RCA No.24/2014
Amba Rani Vs. DDA
26.10.2015*

*Present: None for the appellant.
Shri P.K. Aggarwal, Counsel for the respondent/DDA.*

None is present on behalf of the appellant, be awaited till 12 noon.

*(Kuldeep Narayan)
Additional District Judge-05*

12 noon

*Present: None for the appellant.
Shri P.K. Aggarwal, Counsel for the respondent/DDA.*

None is present on behalf of the appellant since morning.

Perusal of the record also shows that none has been appearing on behalf of the appellant for the last many dates.

Hence, appeal Is dismissed In default.

Appeal file be consigned to Record Room.

*Announced
26.10.2015*

*(Kuldeep Narayan)
Additional District Judge-05
West District, Tis Hazari Courts Delhi*

xxx xxx xxx''

19. Thus, it is evident that the judgment, dismissing the suit filed by Smt. Amba Rani, has attained finality, as the appeal against the same was dismissed and no further proceedings were taken by the said Smt. Amba Rani or the petitioner herein, in that regard.

20. On the basis of will executed by Smt. Amba Rani, upon her demise, the petitioner herein, claimed right as an allottee of the flat in question.

21. Perusal of the record shows that a writ petition being W.P.(C) No.



20036/2005, was filed by Smt. Amba Rani, before this Court, with the following prayers:

“a) issue a writ of mandamus or a writ order or direction in the nature of mandamus directing the respondent to immediately provide the possession of flat mentioned in the allotment letter or the alternative flat;

b) issue a writ, order or direction to also arrange the interest on the event of un-necessarily delay by the respondent office from the date of deposit of the total amount;

c) pass any other order or orders as deemed fit and proper in the facts and circumstances of the present case.”

22. The aforesaid writ petition was dismissed as withdrawn, vide order dated 07th October, 2005, in view of the pending suit, having already been filed by the original allottee, Smt. Amba Rani. The order dated 07th October, 2005, reads as under:

“07.10.2005

Present: Mr. Rakesh Kakkar for the petitioner.

W.P.(C) No. 20036/2005

Learned counsel for the petitioner seeks leave to withdraw the writ petition with liberty to move an appropriate application in the pending suit which has been filed by the petitioner.

Liberty granted. Dismissed as not pressed.”

23. Subsequently, an application was also filed by Smt. Amba Rani in the year 2016, in the aforesaid writ petition, which was again dismissed as withdrawn, with liberty to seek appropriate legal remedies. The order dated 03rd June, 2016 passed in W.P.(C) No. 20036/2005, reads as under:

“CM 23098/2016

Learned counsel for the petitioner seeks permissions to withdraw this application with liberty to file appropriate legal remedies available to the petitioner in accordance with law.

The application is dismissed as withdrawn with liberty as prayed for.”



24. Thus, when the earlier suit filed by the original allottee has already been dismissed and a previous writ petition by the original allottee, on the same cause of action, has already been dismissed as withdrawn, the present writ petition filed by the petitioner, on the same cause of action, claiming to have stepped into the shoes of the original allottee, cannot be entertained. The present writ petition is clearly barred by law.

25. Thus, holding that principles of constructive *res judicata*, which are laid down under Order XXIII Rule 1 of Code of Civil Procedure (“CPC”), 1908, are applicable even in writ proceedings, Supreme Court in the case of *State of Orissa and Another Versus Laxmi Narayan Das (Dead) Through LR and Others*, 2023 SCC OnLine SC 825, has held as follows:

“xxx xxx xxx

37. On the question, as to whether after the withdrawal of a suit claiming the same relief without having permission to institute fresh one for the same relief, a writ petition will be maintainable before the Court, the guidance is available from the judgment of this Court in *M.J. Exporters Private Limited v. Union of India*, (2021) 13 SCC 543, wherein the principle of constructive *res judicata* was applied. The case concerns a litigant who sought to file a fresh writ petition after withdrawal of the earlier writ petition filed for the same relief without permission to file fresh one. The Court held that the principles contained in Order 23, Rule 1 CPC are applicable even in writ proceedings. Para 15 thereof is extracted below:

“15. In these circumstances, we feel that when this issue was raised and abandoned in the first writ petition which was dismissed as withdrawn, the principles of constructive *res judicata* which are laid down under Order 23 Rule 1 of the Civil Procedure Code, 1908, and which principles are extendable to writ proceedings as well as held by this in *Sarguja Transport Service v. STAT*, (1987) 1 SCC 5.”

38. Having regard to the principles laid down in *M.J. Exporters Private Limited (supra)*, in our view, applying the principles of constructive *res judicata*, the present writ petition filed by the respondents after



withdrawal of the civil suit, was not maintainable, in the sense that it ought not to have been entertained. In case the respondents still wanted to justify filing of the writ petition, they should have at least disclosed complete facts and then justify filing of the writ petition.

xxx xxx xxx”

(Emphasis Supplied)

26. Reiterating, that principles of *res judicata* apply to writ proceedings under Articles 226 and 227 of the Constitution of India, Supreme Court in the case of ***Central Bank of India and Others Versus Dragendra Singh Jadon, 2022 SCC OnLine SC 957***, has held as follows:

“xxx xxx xxx

15. The principles of res judicata are attracted where the matter in issue in the later proceedings have directly and substantially been in issue in earlier proceedings, between the same parties, in a competent forum having jurisdiction. Res judicata debars the Court from exercising jurisdiction to determine the lis, if it has attained finality between the parties. There is a distinction between res judicata and issue estoppel. In the case of issue estoppel, a party against whom an issue has been decided would be estopped from raising the same issue again.

xxx xxx xxx”

(Emphasis Supplied)

27. Likewise, this Court in the case of ***Partha Ghosh and Another Versus The Institute of Chartered Accountants of India and Others, 2017 SCC OnLine Del 10985***, has held as follows:

“xxx xxx xxx

19. In Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara: 1963 (1) Suppl. SCR 172, the Supreme Court had referred to the rule of constructive res judicata and observed as under:—

“This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the



same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred.”

xxx xxx xxx”

(Emphasis Supplied)

28. Holding that a subsequent writ petition, filed after dismissal of a suit filed earlier on the same cause of action, is not maintainable, in the case of ***Ab. Hamid Bhat and Others Versus Union Territory of Jammu and Kashmir through Chief Secretary and Others, 2023 SCC OnLine J&K 752***, it has been held, as follows:

“xxx xxx xxx

25. The suits have been dismissed in default, such dismissal for default, which stands till restoration is allowed, if at all, obviates the scope of applying the principle of res-subjudice. However, applying the principle of Order IX Rules 8 and 9 of the Civil Procedure Code, 1908, if the cause of action in the suits and present writ petition is identical, then petitioners are barred from seeking similar reliefs in the present writ petition. For facility of Reference, Order IX Rule 8 and 9 are reproduced hereunder:

“8. Procedure where defendant only appears.- Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the court shall make an Order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.”

“9. Decree against plaintiff by default bars fresh suit.

(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an



order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. and shall appoint a day for proceeding with suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.”

26. Order IX Rule 9 bars fresh suit or proceedings in respect of the same cause of action in case the earlier suit was dismissed as indicated in Order IX Rule 8 of the CPC. The term “same cause of action” assumes significance in as much as the bar under Order IX Rule 8 of the CPC applies to a later suit only in respect of the very same cause of action. *In case the cause of action in the later suit was altogether different, which has nothing to do with the cause of action in the earlier suit; the statutory bar has no application to such later suits. It was only with a view to curb the tendency of filing multiple suits, on the basis of the very same cause of action, successively even after the dismissal of the earlier suit that such a provision has been introduced. It was not the intention of the Legislature to bar the subsequent suits between the parties and the same was evident by the qualifying words, “same cause of action”. Therefore, everything depends upon the cause of action and in case the subsequent cause of action arose from a totally different bunch of facts, such suit cannot be axed by taking shelter to the provision of Order IX Rule 9 of CPC. **This being the legal position, it becomes important to mention herein that the Hon'ble Supreme Court of India in its various judicial pronouncements has laid down that although the Civil Procedure Code may not be applicable in its entirety in writ proceedings but the principles enshrined therein apply with full force. Consequently, in view of the principles enshrined under Order IX Rule 9 prohibiting filing of a second suit for same cause of action, it would necessarily imply that on the same cause of action which was wholly or partly subject matter of suit filed by petitioner earlier and which has been dismissed in default for non appearance of the plaintiffs, a writ petition under Article 226 is not maintainable.***

xxx xxx xxx

28. Furthermore, in another case titled Prem Narain Nigam v. The State of U.P., 2006 (7) ADJ 228 the Court held as under:

“19. The Hon'ble Supreme Court in the cases of Regional Food Controller, Meerut v. Hazari Mal Radha Kishan, Commission Agent, RDTD. Firm At Pakka Bagh, Hapur, District Meerut through its Partner Om Prakash (1966) 64 All LJ 528, Sarguja



Transport Service v. State Transport Appellate Tribunal, Gwalior (1987) 1 SCC 5 : (1987) 1 SCR 200, In re: Udai Narain Rai 1992 All LJ 274, Tata Press Limited v. Mahanagar Telephone Nigam Limited (1995) 5 SCC 139 : AIR 1995 SC 2438 Ashok Kumar Srivastav v. National Insurance Company Ltd. (1998) 2 SCR 1199, Commissioner of Endowments v. Vittal Rao (2005) 4 SCC 120 : AIR 2005 SC 454 has specifically laid down that although Civil Procedure Code may not be applicable in its entirety in writ proceeding but principle enshrined therein apply with full force. Consequently, in view of the principle, prohibiting bringing of a second suit for same cause of action would necessarily apply that a writ petition for the same cause of action which was wholly or partly subject matter of suit filed by plaintiff-petitioner earlier and which has been dismissed in default would be precluded.

xxx xxx xxx”

(Emphasis Supplied)

29. This Court also rejects the contention raised by learned counsel appearing for the petitioner, that the interim order dated 06th March, 2000, passed by the learned Trial Court, in the suit filed by the original allottee, was in the nature of a final direction. By the said order dated 06th March, 2000, the learned Trial Court, at the time of restoring the suit of the original allottee, that had earlier been dismissed in default, had noted the averment of the original allottee that demanded amount had been deposited by her subsequently, during the pendency of the suit. Thus, the Junior Law Officer of the DDA who was present in Court was directed to issue demand letter towards the interest component to the original allottee, on account of the belated payment. The said order did not adjudicate the right of the original allottee in any manner for allotment of flat in her favour, despite the belated payment. Besides, the suit of the original allottee was ultimately dismissed in the absence of any evidence being led by the said original allottee. The appeal against the same was also dismissed in default. Thus, it is apparent



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that there were no findings in favour of the original allottee, as regards her entitlement to allotment of the flat. Therefore, no benefit can be drawn by the petitioner herein, from the aforesaid order passed by the learned Trial Court.

30. Considering the aforesaid detailed discussion, no merit is found in the present petition. The same is accordingly dismissed, along with the pending applications.

**(MINI PUSHKARNA)
JUDGE**

JULY 19, 2024
Ak/kr