



2024:DHC:8000



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

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Judgment reserved on: 14.10.2024
Judgment pronounced on: 16.10.2024

+ **RFA 452/2022**

ACHLA MALHOTRA

.....Appellant

Through: Mr. K. Venkatraman, Advocate.

versus

DELHI STATE NPEF CGHS LTD. AND ORS.Respondents

Through: Mr. Roopansh Purohit, Advocate for
R-1 & R-2.**CORAM:****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T****GIRISH KATHPALIA, J.:**

1. By way of this appeal brought under Order XLI Rule 1 read with Section 96 of the Code of Civil Procedure, the appellant has assailed order dated 03.10.2019 of the learned Additional District Judge, South-West, Dwarka Courts, Delhi, whereby the money recovery suit filed by her was dismissed as barred by limitation. On service of notice, respondent no. 1 Society and its Administrator (*arrayed as respondent no. 2*) entered appearance through counsel. Respondent no. 3, the Registrar, Co-operative Group Housing Society, is a proforma respondent. I heard counsel for both sides and examined the digitized record of the trial court.

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2. As reflected from the trial court record, on the very first hearing held on 17.07.2019, the learned trial court observed that from perusal of the averments made in the plaint, the suit appeared to be barred by limitation and accordingly, opportunity was granted to counsel for appellant to address arguments. After hearing learned counsel for the appellant, the learned trial court passed the impugned order, dismissing the suit as time barred. Hence, the present appeal.

3. Briefly stated, the factual matrix pleaded by the appellant in her plaint was as follows. On 03.10.2011, the appellant applied before the governing body of the respondent no. 1 Society for its membership and purchase of flat in the society. On demand of respondents no. 1&2, a sum of Rs. 1,00,00,000/- by way of cheques dated 03.10.2011 for Rs. 35,00,000/- and dated 04.10.2011 for Rs. 65,00,000/- was deposited with them by the appellant, both of which cheques were duly honoured. After credit of the said amount of Rs. 1,00,00,000/- in their account, respondents no. 1&2 told the appellant that membership and flat in the society would be offered to her according to availability of vacancy. But thereafter across a period of two and half years, the appellant did not receive any indication about availability of membership and the flat despite her repeated verbal requests. The appellant lost hope and started requesting for refund of Rs. 1,00,00,000/- from the Society, in response to which respondents no. 1&2 kept assuring her and kept asking her to wait. In the month of April 2014, after repeated



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requests of the appellant, a sum of Rs. 50,00,000/- was transferred to her bank account through RTGS by respondents no. 1&2, and they promised to return her balance amount soon. But thereafter, despite her repeated requests across a period of about 05 years, the respondents no. 1&2 did not return the balance amount of Rs. 50,00,000/- to the appellant. Rather, the respondents no. 1&2 with dishonest intention served a legal notice dated 06.02.2018, followed by reminder notice dated 06.03.2018 on the appellant, demanding from her a sum of Rs. 50,00,000/-. Respondents no. 1&2 also alleged that the appellant had conspired with few of the members of the Society and had siphoned off funds of the Society to the tune of Rs. 50,00,000/-. The appellant served demand notice dated 25.03.2019 followed by reminder notice dated 25.04.2019 on respondents no. 1&2, demanding refund of her money with interest but both notices were ignored by respondents no. 1&2. Hence, the suit for recovery of Rs. 1,12,50,000/- alongwith *pendent lite* and future interest at a rate of 12% per annum.

4. In the impugned order, the learned trial court recapitulated the above mentioned pleadings of the appellant and observed that the cause of action accrued to the appellant when respondent no.1 Society surrendered the promise to provide membership and flat in the society and ultimately in April 2014, it returned Rs.50,00,000/- to the appellant out of Rs.1,00,00,000/-, therefore, the period of limitation to claim the balance of the amount started running from 23.04.2014 and consequently the suit filed by the appellant on 12.07.2019 was beyond the prescribed limitation period

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of three years.

5. During arguments before this court, learned counsel for appellant took me through the above pleaded factual matrix as well as documents and contended that dismissal of the suit without trial was not proper and the appellant should have been granted opportunity to prove through oral evidence that she kept requesting the respondents no.1&2 to pay the balance amount of Rs.50,00,000/-, so the suit was within prescribed period. It was also argued that the period of limitation would commence from 25.03.2019 when the appellant issued demand notice and consequently the suit filed on 11.07.2019 was well within time.

6. On the other hand, learned counsel for respondent no.1 and 2 supported the impugned order and contended that the present appeal is devoid of merit. Learned counsel for respondents also took me through the documents filed by the appellant herself.

7. On perusal of documents filed with the present appeal, it is revealed that on the complaint of the respondents, alleging that Rs.50,00,000/- (*which according to the appellant was paid out of Rs. 1,00,00,000/-*) had actually been siphoned off, Police Station Sector 23, Dwarka, Delhi registered FIR No.275/2017 for offences under Section 419/420/477A/120B IPC. The appellant herself has filed as Annexure P-6 (colly) the documents including notices under Section 91 Cr.P.C issued to her by the Economic Offences

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Wing and her replies to the same. As mentioned above, in notice dated 06.02.2018 also the respondents claimed that the amount of Rs.50,00,000/- had been siphoned off by the appellant.

8. To reiterate, it is appellant's own case that out of a sum of Rs.1,00,00,000/- deposited by her, the respondents no.1&2 paid back Rs. 50,00,000/- on 23.04.2014. It is further the appellant's own pleadings that prior to 23.04.2014, the respondents no.1&2 "surrendered" their promise to provide membership and flat in the society and promised to return Rs.1,00,00,000/- as soon as possible; and that on 23.04.2014 after paying the amount of Rs.50,00,000/-, respondents no.1&2 promised the appellant that the balance would be paid shortly. Further, it is appellant's own case that for five years the respondents did not return the balance amount of Rs.50,00,000/-, so she issued demand notice dated 25.03.2019 followed by reminder dated 25.04.2019. The suit was filed on 12.07.2019.

9. Going by the above conspectus of pleadings, there is absolutely no scope to dispute that the limitation period to file the suit for recovery of money in the present case commenced on 23.04.2014. It is trite that the limitation period, once it begins to run does not stop till its culmination as prescribed in the Schedule to the Limitation Act. It is nobody's case that ever subsequent to 23.04.2014, the respondents acknowledged in writing any liability to pay, so as to extend the benefit of fresh reckoning of limitation period to the appellant. Contention of the learned counsel for



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appellant that the appellant should have been granted opportunity to prove by oral testimony her repeated visits to the respondents to claim the balance amount holds no water for the purposes of extension or exclusion or fresh reckoning of the limitation period. The suit having been filed on 12.07.2019 was clearly beyond the prescribed period of three years of limitation from 23.04.2014, when according to the appellant, a sum of Rs.50,00,000/- was paid to her by the respondents with the promise to pay the balance soon.

10. In view of above discussion, I am unable to find any infirmity in the impugned order, so the same is upheld and the present appeal is dismissed.

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(JUDGE)

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