



2024:DHC:8643-DB



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

+ **FAO(OS) 156/2024 & C.M.Nos.64814-64818/2024**

ANOOP SHARMA

.....Appellant

Through: Mr.Upamanyu Sharma, Advocate.

versus

**COMMONWEALTH GAMES VILLAGE APARTMENT OWNERS
ASSOCIATION & ORS**

.....Respondents

Through: None

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Date of Decision: 06th November, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present appeal has been filed challenging the order dated 01st September, 2023 passed by the learned Single Judge of this Court in I.A. No.14017/2017 & I.A.No.6759/2018 in CS (OS) No.440/2017, whereby the applications filed by respondent nos. 8 & 9 were allowed and the said respondents were deleted from the array of parties.

2. The appellant herein is not a party to the underlying suit as his application for impleadment being I.A. No. 3457/2024 is still pending adjudication. The appellant was the former Vice President of the governing body of the association for the term 2016-2018, when the subject suit was instituted. The subject suit has been filed by respondent no.1/plaintiff-

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association seeking recovery of Rs.19,56,52,783/- along with interest against the respondent no.2-builder alone. Respondent nos. 8 & 9 were the representatives of the DDA, who became the members of the *ad-hoc* nominated governing body of the respondent no.1/plaintiff-association.

3. Learned counsel for the appellant states that the application filed by respondent nos.8 & 9 were barred by limitation. He states that the respondent nos. 8 & 9 had earlier filed identical applications on 24th July, 2018, wherein defects were marked but not cured by the said respondents.

4. He contends that learned Nodal Officer did not have the power to instruct/direct the counsel for respondent no.1 on merits. He states that in terms of the order dated 29th August, 2022 passed in RFA No.269/2019, the authority conferred on to the Nodal Officer was limited to appointing counsel for representation and that the said authority did not extend to the Nodal Officer giving instructions and/or directions to the counsel. He states that the association is in midst of dispute pertaining to its governing body and does not have a duly elected representative through which it is represented in the suit. He thus contends that the impugned order is contrary to the principles of natural justice.

5. He also contends that respondent nos.8 & 9 are proper parties to the suit. He further contends that the learned Single Judge has erred in holding that no cause of action has been pleaded against the said respondents. He states that there are specific averments made in the subject suit with respect to respondent nos. 8 & 9. He states that the subject suit is for recovery including recovery of common area maintenance charges that were determined by the members/office bearers of the nominated governing body and were also raised by the members/office bearers of the nominated



governing body, which included respondent nos. 8 & 9. He thus states that the presence of respondent nos. 8 & 9 is necessary for the complete and effectual adjudication of the matter.

6. Having heard learned counsel for the appellant and having perused the paper book, this Court finds that respondent nos.8 & 9 were impleaded in the suit as they were nominated members of respondent no.11/DDA. The said respondents were therefore not impleaded in their personal capacity but because they being employees of DDA were nominated by DDA to the *ad hoc* governing body.

7. A bare perusal of the prayer in the subject suit will show that no relief has been sought against respondent nos.8 & 9. The relief is sought only against respondent no.2-builder. Therefore, the said respondents are neither necessary nor proper parties to the suit. In any event, if the common area maintenance charges have been determined and raised by respondent nos.8 & 9, they can be summoned as witnesses.

8. This Court is also of the view that the Nodal Officer who is a retired District Judge has full power to instruct/direct the counsel for respondent no.1. For if it is not so, the underlying suit would have to be adjourned *sine die*. Further, delay in re-filing would not make the application barred by limitation.

9. Moreover, the appellant, not being a party to the subject suit, has no locus to file the present appeal. This Court is of the view that no grounds are made out for granting leave to the appellant to file the present appeal. Further, the present appeal is barred by delay of 377 days.



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10. Accordingly, the present appeal along with the applications is dismissed both on the ground of merit as well as delay.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

**NOVEMBER 06, 2024
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