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

\+ FAO 72/2024

DHARAMVIR .....Appellant

Through: Mr. Chandan Kumar Singh, Mr. Rishesh Sikarwar, Advocates.

versus

EMINENT OFFICERS WELFARE SOCIETY REGD .....Respondent

Through: Mr. Varun Singh, Advocate.

\+ FAO 73/2024

SURENDER KUMAR RATHEE .....Appellant

Through: Mr. Chandan Kumar Singh, Mr. Rishesh Sikarwar, Advocates.

versus

EMINENT OFFICERS WELFARE SOCIETY REGD .....Respondent

Through: Mr. Varun Singh, Advocate.

\+ FAO 74/2024

NAND KISHORE SIROYA .....Appellant

Through: Mr. Chandan Kumar Singh, Mr. Rishesh Sikarwar, Advocates.

. versus

EMINENT OFFICERS WELFARE SOCIETY REGD .....Respondent

Through: Mr. Varun Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **19.02.2026**

CM APPL. 13620/2024 (delay) in FAO 72/2024

CM APPL. 13625/2024 (delay) in FAO 73/2024

CM APPL. 13648/2024 (delay) in FAO 74/2024

1. The present applications have been filed seeking condonation of delay of 345 days in filing the respective accompanying appeals.

2. The learned counsel for the appellants contended that the delay in filing the accompanying appeals was caused by the negligence and misrepresentations of the appellants' previous counsel. It is stated that although the appellants approached the said counsel on 21.04.2023 for filing the appeals concerned, he erroneously filed the case under the incorrect category (COMM. IPD-CR), subsequently failed to cure the defects despite repeated assurances, and later returned the brief to the appellants. It is further stated that upon discovering from the Registry in January 2024 that a completely unrelated file had been uploaded under the name of their case, merely to generate a diary number, they promptly engaged a new counsel and preferred the present appeals in February 2024.

3. It is a settled that while there may not be a general proposition of law that a mistake by counsel is always a sufficient ground to condone delay, the mistake of counsel in certain circumstances 'can' be taken into account in condoning delay, subject to the mistake not being an underhanded attempt by the applicants at saving their case from limitation (Ref: *Lala Mata Din Vs. A. Narayanan*[1]).

4. In the present facts, this Court is of the view that the delay is sufficiently explained, and the appellants should not be made to suffer for the inaction and professional default of their erstwhile advocate.

5. Accordingly, the present applications are allowed and the delay of 345 days in filing the accompanying appeals is condoned.

6. The present applications are disposed of in the above terms.

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[1] (1969) 2SCC 770

CM APPL. 38793/2024 (delay in filing rejoinder) in FAO 72/2024

CM APPL. 38791/2024 (delay in filing rejoinder) in FAO 73/2024

CM APPL. 38792/2024 (delay in filing rejoinder) in FAO 74/2024

1. The present applications have been filed seeking condonation of delay of 36 days in filing the respective rejoinders.

2. For the reasons stated in the respective applications, the same are allowed, and the delay is condoned.

3. The present applications are disposed of in the above terms.

FAO 72/2024

FAO 73/2024

FAO 74/2024

1. The present appeals have been preferred by the appellants/plaintiffs seeking setting aside of the common order dated 18.03.2023 passed by the learned ADJ-04, South West, *Dwarka* Courts, in CS DJ ADJ Nos. 732/2022, 733/2022, and 734/2022, whereby the applications filed by the appellants under Order XXXIX Rules 1 & 2 CPC were dismissed.

2. Since the present appeals pertain to a common order, raise a common issue, and common submissions have been addressed by the learned counsels, all three appeals are taken up together for consideration and disposed of by way of this judgment.

3. *Vide* the impugned order, the Trial Court dismissed the appellants' applications seeking an *ad interim ex-parte* temporary injunction against the respondent/defendant Society to seize its bank account no. XX6320 and an *ad interim ex-parte* mandatory injunction to restrain the respondent, its agents, and assigns from using the amounts of the appellants lying in the respondent's bank account no. XX6320.

4. The appellants instituted the respective underlying suits claiming that they became members of the respondent, a welfare Society registered under the Societies Registration Act, 1860. In accordance with the purpose of the Society to offer residential flats, the appellants also booked their respective flats and paid a sum of Rs.15,75,000/- towards cost of land. Later, on a demand raised for 10% of the cost of land, a sum of Rs.1,57,500/- was paid *vide* receipt no. 720. Subsequently, on another demand raised in pursuance of AGM held on 12.01.2019, a further sum of Rs.4,60,500/- was paid *vide* receipt no. 803. It is the common grievance of the appellants that the Society is using the said additional sums towards pursuing litigation, and that when the appellants demanded refund of the additional amounts, the same was denied.

5. The respondent, on the other hand, contested the suit by contending that the earlier office bearers of the Society had siphoned off the amounts. The General Body, in the AGM held in August 2022, resolved that civil as well as criminal proceedings be pursued for recovery of the embezzled amount, and the legal expenses be borne out of the account of the Society.

6. The Trial Court, while passing the impugned order, observed that the appellants are yet to establish that the additional amounts paid were disjuncted from the earlier payments, and that it could not be concluded that the additional amounts paid were for a different head or particular head towards purchase of additional land. The Trial court referred to the two receipts and noted that the same do not specify any head under which the payments were received. Rather, the record suggested that the additional amount was linked to an 8% increase in flat area and a reduction in FAR. The impugned order further observes that allowing the applications would have serious ramifications on the working of the respondent, since, if the

respondent Society were to become liable to repay the said funds, it would virtually bring about the end of the respondent for the reason that the corpus of the respondent has already been siphoned off, and whatever little money they have, by way of which they are sustaining the litigations to recover the embezzled funds from their former office bearers and others, would be obliterated.

7. A perusal of the written statement filed before the Trial Court would show that an issue in this regard was raised before the AGM held in August 2022 and the same was rejected by the majority vote. Indisputably, there is no challenge in the plaint to the resolution passed by AGM. The corpus held by the Society is for all the members to the Society. Further, there is no allegation that the additional funds are being misused, in contravention to any purpose/resolution of the Society.

8. This Court is of the considered view that there is no infirmity warranting interference in the well-reasoned order of the Trial Court. It was rightly concluded that in the absence of an admission on the part of the respondent that the concerned amounts paid by the appellants were for a distinctive purpose, no *prima facie* case was made out at this juncture. The other two ingredients on the anvil of which the case of the parties had to be evaluated, namely the balance of convenience and irreparable loss and injury, have also been rightly held to be against the appellants.

9. Finding no ground to interfere with the impugned order, the present appeals are dismissed.

10. The present appeals are disposed of in the above terms.

MANOJ KUMAR OHRI, J

FEBRUARY 19, 2026/nb