

(2001) 05 DEL CK 0055

In the Delhi High Court

Case No : Civil Writ Petition No. 3350 and CM. 6552/97

Basant Mayaramka

APPELLANT

Vs

Registrar Co-operative Societies and Others

RESPONDENT

Date of Decision : 01-05-2001

Acts Referred:

Citation : (2001) 4 AD 634

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Ms. Pinky Anand, for the Appellant; Mr. Ramesh Chandra Mr. V. Shankra and Mr. Shekhar Sinha, for the Respondent

Judgement

Manmohan Sarin, J.—Rule.

With the consent of parties, the writ petition is taken up for disposal.

2. Petitioner by this writ petition seeks a direction for calling of records and quashing the impugned orders dated 19.9.1994 and 23.1.1995, passed by respondent No.2 Society.

3. The letter dated 19.9.1994, is referred to in the petition as order dated 19.9.1994, is, in fact, a communication by the Society to the petitioner, informing him that he had failed to deposit the amount with interest within the period of 45 days, as required by letter bearing No.F/47/338/GH/Cooperative? 1576 dated 28.7.1994. As a consequence, he had been expelled from the membership of the Society and his name deleted from the register of members.

4. Vide communication dated 23.1.1995, which is again referred to in the prayer clause as an order, the respondent No.2 Society, noted the factum of the expulsion of the petitioner from the membership of the Society. A cheque bearing No. 744349 dated 23.1.1995 for Rs.89,100/- was enclosed, settling petitioner's account.

5. On a perusal of the record, it is seen that the order under Rule 36 of the Delhi

Co-operative Societies Rules, 1973, was passed by the Registrar, Cooperative Societies, on 28.7.1994. It appears at page 20 of the paper book. The said order has, on the top another date i.e. 4.8.1994. The order records the presence of the petitioner Along with the other defaulting members, who had been sent notices with regard to their proposed expulsion, being defaulters. The order, after recording the presence of the defaulting members including the petitioner, records that the members agreed to make payment of the amounts outstanding against them as per the statement, D-1, filed by the Society. The Registrar gave, to the said defaulting members, a period of 45 days to make the payment. The sum shown as due against the petitioner was Rs.40,000/- together with interest.

6. Petitioner's case, firstly, is that the order was, in fact, dated 4.8.1994 and not 28.7.1994. This is urged so that the period of 45 days would get over by 17th September,1994. This submission is not borne out from the record as the second page of the order and the nothings on the file of the Registrar show that the date of the order is 28.7.1994.

7. petitioner further claims that he had paid a sum of Rs.10,000/- vide cheque No. 817524 dated 23.4.1994, while two banks drafts of Rs.15,000/- were deposited by him in the account of the Society had failed to give him credit for Rs. 10,000/- which was paid by him by cheque. He claims that if credit for the said sum of Rs.10,000/- is also given to him, the demand raised by the respondent Society would stand satisfied.

8. Learned counsel for the respondent society, on the other hand, submitted that the amount of Rs.40,000/- had been computed and accepted by the petitioner as due after taking into account the payment of Rs. 10,000/- . In any case, it is stated that petitioner failed to make the payment of balance amount within 45 days from 28.7.1994 and, Therefore, defaulted on both counts. The Registrar, Therefore, approved the expulsion of the petitioner vide order dated 28.7.1994.

9. Learned counsel for the petitioner, Ms. Pinky Anand, fervently urged that the petitioner was a member of long standing and he should not be made to suffer on account of respondents default in not giving him credit for the sum of Rs.10,000/- paid by the petitioner vide cheque dated 23.4.1994 and acknowledged vide a receipt dated 4.5.1994, towards flat construction charges. Ms. Anand also relied on a notice dated 21.3.1994, where the outstandings shown were Rs.40,000/-. In short, the submission is that if the payment of Rs.10,000/- would be taken into account then the sum of Rs.40,000/- could not be due from the petitioner on 28.7.1994.

10. Learned senior counsel, Mr. Ramesh Chandra has refuted these submissions by submitting that the proceedings before the Registrar under Rule 36 were for approving the expulsion of member, who were defaulters. The very scope of enquiry under Rule 36 is to give an opportunity to the members to show cause against the impending expulsion on resolution passed by the Society for expulsion prior to its approval by the Registrar. The impugned order itself shows

that petitioner was present among other defaulters and was informed of his outstandings being Rs. 40,000/- This was duly accepted by the petitioner. Petitioner among other defaulter members was given time of 45 days to make the payment from 28.7.1994. In other words, his submission is that there is a finality to the outstandings, which were accepted. There is merit in this submission.

11. Besides if petitioner had any grievance, it was open for the petitioner to either raise a dispute u/s 60 of the Delhi Co-operative Societies Act or even prefer an appeal u/s 76 of the said Act. Petitioner chose to do nothing. Instead the petitioner simply preferred a complaint to the Registrar on 30.2.1995. Ms. Anand states that no action has been taken on the said complaint. Mr. Chandra submitted that the said complaint has been dismissed. Petitioner cannot simply lodge a complaint against an order that is appealable, that too belatedly and then claim that since complaint was pending, he did not exercise the available legal remedies, In any case, petitioner filed the writ petition also belatedly on 13.2.1997.

12. Mr.Chandra submits that propounding a different date i.e. 4.8.1994 was dishonest and futile attempt by the petitioner to bring the payments made, within the stipulated period. It is not necessary for me to advert on this aspect, as even otherwise, I find that the petitioner has failed to make out a case, warranting interference in exercise of writ jurisdiction under Article 226 of the constitution of India. Petitioner has also not availed of the alternate efficacious remedies, which were available.

13. The writ petition has no merit and is dismissed.

14. Ms. Pinki Anand makes a request that the amount of Rs.40,00/- be refunded to the petitioner. Mr. Chandra states that he would check the position and in case any amount is lying to the credit of the petitioner, the same would be refunded.