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**(2011) 06 DEL CK 0058**

**In the Delhi High Court**

**Case No :** Cont. Cas (C) 430 of 2011 in Writ Petition (C) No. 3629 of 2011

Dinesh Monga

APPELLANT

Vs

Sh. V.P. Duggal and Others

RESPONDENT

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**Date of Decision :** 03-06-2011

**Acts Referred:**

**Citation :** (2011) 06 DEL CK 0058

**Hon'ble Judges :** Rajiv Sahai Endlaw, J

**Bench :** Single Bench

**Advocate :** A.B. Pandey, for the Appellant; Subhash Gupta, General Secretary, V.P. Duggal, Secretary Finance and J.K. Sharma, for the Respondent

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## **Judgement**

Rajiv Sahai Endlaw, J.—Dr. Subhash Gupta, General Secretary of the Mount Kailash Tower-III Avasiya Committee appears in person and states that the order dated 25th May, 2011 in W.P.(C) No. 3629/2011 was served on the Committee on 28th May, 2011; that on Monday i.e. 30th May, 2011 an attempt was made to restore the water supply but the plumber was not available; that the Petitioner was asked to arrange for his own plumber and to also pay arrears due from him. On enquiry, as to what arrears are due from the Petitioner, it is informed that the Petitioner has not paid any common maintenance charges with effect from July, 2007 and a sum of Rs. 1,11,100/- is due from the Petitioner as of 31st May, 2011.

2. The Petitioner has as a condition to the order of which contempt is averred, deposited a sum of Rs. 1 lac in the Registry of this Court.

3. It has been put to the counsel for the Petitioner that the Respondents cannot be expected to run/operate the common maintenance services in the building without contribution from all the residents /occupants of the building and thus the amount of Rs. 1 lac lying deposited in this Court would not enable the Respondents to make provision for the services and non-payment by one resident may affect the facilities to the other residents also. It has as such been

suggested that the amount of Rs. 1 lac deposited be allowed to be released to the Respondents subject to further orders.

4. The counsel for the Petitioner however states that maintenance charges at the rate of Rs. 1200/- per month only are due; at the said rate from July, 2007 till 31st May, 2011 a sum of Rs. 56, 600/- only is due.

5. Dr. Subhash Gupta responds that besides the maintenance charges at the rate of Rs. 1200/- per month, other charges including towards sinking fund are also levied on all the residents and who are paying the same and the same are levied on the Petitioner also and the amount disclosed of Rs. 1,11,100/- is inclusive of the said sinking fund. It is explained that the sinking fund is for incurring capital expenditure on the building from time to time.

6. The counsel for the Petitioner controverts that the sinking fund is being paid by the others.

7. The counsel for the Petitioner on instructions from the Petitioner, a practicing advocate present in the Court states that the Petitioner is not agreeable to the release of the amount deposited and the matter be posted after vacation.

8. In the circumstances, it is not deemed expedient to allow the Petitioner to benefit in the manner aforesaid by granting any relief of restoration of water supply as sought. The Petitioner, to be entitled to equity must take a reasonable stand. The stand taken of a litigious nature, does not behove an advocate of this Court and does not entitle the Petitioner to any relief at this stage. It may be mentioned that the writ petition of order wherein contempt is averred was filed averring disconnection of water supply by the Delhi Jal Board (DJB). However DJB stated that disconnection was not by DJB but by the Respondents herein. The same was not controverted by the Petitioner. In such state of affairs, the writ petition was not even maintainable to resolve private disputes between Petitioner and Respondents and indulgence appears to have been shown to the Petitioner by issuing notice of writ petition and directing restoration of water supply on deposit of money in Court. However the Petitioner, by taking such unreasonable stand, appears to be misusing the indulgence shown to him. Sinking fund is collected with respect to all apartments/condominiums; while monthly maintenance charges are prorata share of recurring common maintenance expenses, the sinking fund is for contingencies like replacement of elevators, generators, pumps etc.-without such collection, the Association will have no funds to meet such sudden common expenditures.

9. Reply be filed within four weeks. Rejoinder, if any be filed before the next date of hearing.

List on 25th July, 2011.