

(2008) 05 DEL CK 0133
In the Delhi High Court
Case No : Writ Petition (C) 1122 OF 2007

Dr. L.K. Behl

APPELLANT

Vs

I.D.P.L. Employees Co-operative Group Housing Society Ltd.

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi Co-operative Societies Rules, 1973 — Rule 36(a)

Citation : (2008) 103 DRJ 564

Hon'ble Judges : Manmohan, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Sudhir Nandrajog and Titni Basu, for the Appellant; R.N. Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

Manmohan, J.—The present writ petition has been filed under Article 226 of the Constitution of India for issuance of an appropriate writ, order or direction to set aside the order of the Delhi Cooperative Tribunal dated 26th September, 2006 and to restore the award passed by the Arbitrator for refund of the money deposited with the Respondent Society with 18% interest and costs.

2. Briefly stated the material facts of this case are that in the year 1974 the Petitioner was enrolled as a member of the Respondent Cooperative Society. At that stage, Petitioner was neither a member of any other cooperative housing society nor did he own any other residential property in Delhi. However, in the year 1978 Petitioner enrolled himself as a member of another cooperative housing society. On realising that he could not be a member of two cooperative societies, Petitioner in 1984 allegedly resigned from the membership of the other cooperative housing society. However, in 1986 the Respondent Cooperative Society ceased the membership of the Petitioner on the ground that he was a member of two societies of the same class. Even while ceasing the membership of the Petitioner, the Respondent Cooperative Society did not refund the amount

paid by the Petitioner amounting to Rs. 1,31,420/- (Rupees One Lakh Thirty One Thousand Four Hundred Twenty only). Petitioner challenged the order of cessation right up to the Supreme Court. However, Petitioner was unsuccessful in his challenge. Thereafter Petitioner requested the Cooperative Society to refund the amount deposited by him with interest @ 18% per annum. Since the Respondent Society refused to refund the said amount, Petitioner filed an arbitration claim petition. On 30th July, 2003, Arbitrator passed an award in favour of Petitioner for refund of the amount deposited by him along with simple interest @ 18% per annum and cost of Rs. 5,000/-. However, the Delhi Cooperative Tribunal on an appeal being filed by the Respondent Society set aside the award on the ground that Regulation 13 of the Respondent Cooperative Society gives power to the Society to forfeit the amount deposited by its member, if the Society finds that the information given by the sub-lessee was incorrect.

3. Learned Counsel for Petitioner submitted that Petitioner had merely been allotted a flat and no sub-lease had been executed in his favour and hence invocation of Regulation 13 was totally unwarranted. Learned Counsel for the Petitioner further submitted that Regulation 13 had never been relied upon by the Cooperative Society before the Arbitrator. In fact, the counsel for the Petitioner claimed refund of the amount deposited by the Petitioner on the strength of Rule 36(a) of Delhi Cooperative Societies Rules 1973. 4. Mr. Bhardwaj, learned Counsel for the Respondent Society submitted that the Cooperative Society was entitled to forfeit the amount deposited by the Petitioner on the strength of Regulation 13. He further submitted that the claim of the Petitioner was barred by limitation. 5. Before we proceed further we may reproduced Rule 36 (a) and Regulation 13 which has been referred to and relied upon by the counsel for the parties.

36A. Penalty for belated payment or equalization charges for new membership on enrollment at the advanced stage of construction, and payment of interest to a member who has resigned his membership in a group housing cooperative society.

1. In case of default in payment of demand in cooperative group housing society by the member's, equalisation charges on enrolment as a member against vacancy and payment of interest on resignation by member, the maximum rate of interest charges shall be as under, which shall be approved by a resolution of the general body of the society:

(a) for default of payment of installment up to six months - @ 12% per annum
(b) for default of payment of installment up to one year - @ 15% per annum
(c) for default of payment of installment for more than one year - @ 18% per annum
(d) Equalisation charges / interest to be charge from the member enrolled at the advance stage of construction - @ 24% per annum. (e) interest to be paid by a ground housing society to a resigned / expelled member on the amount deposited after deducting the administrative expenditure incurred

by the society - @ 7% per annum. Regulation 13:- If at any stage it is found that the information given by the sub-lessee concerned at the time of application or subsequently were incorrect, the society shall have the power to forfeit his rights over the house allotted to him without any refund and to get the house vacated immediately.

6. In our view Regulation 13 would not apply to the Petitioner as no sub-lease had been executed in his favour. In any event, after ceasing the Petitioner's membership, the Petitioner could not be levied with a second penalty of forfeiture of the amount deposited by him. This is more so because the Respondent Society would in any event be charging equalization charge or premium from the new member that it would enroll in the place of the Petitioner. In our view if Regulation 13 is held to be applicable to the Petitioner then it would amount to legitimization of two penalties on the Petitioner for the same offence and it would also amount to unjustly enriching the Respondent Society.

7. We are also of the view that the Petitioner's claim is well within time, in as much as the issue of cessation of the Petitioner's membership only attained finality in the year 2000, when the Hon'ble Supreme Court dismissed the SLP filed by the Petitioner. As far as Mr. Bhardwaj's argument that the Respondent Society needs to be reimbursed the cost it had incurred during the litigation at the cessation stage is concerned, we are of the view that in the present proceedings these costs can not be reimbursed and if the Society was entitled to cost it would have been granted the same in the initial litigation with regard to the issue of cessation. Though strictly speaking Rule 36 (a) refers to resigned or expelled member, in our view the principle stated therein can be extended even to a member whose membership had been ceased. Consequently, we direct the Respondent Society to refund the Petitioner the amount of Rs. 1,31,420/- (Rupees One Lakh Thirty One Thousand Four Hundred Twenty only) deposited by him along with simple interest @ 7% per annum. The present petition is allowed in above terms but with no order as to costs.