

(1997) 02 DEL CK 0070

In the Delhi High Court

Case No : Civil Revision Appeal No. 49 of 1994

Kaymes Co-operative Group Housing Society Ltd.

APPELLANT

Vs

M.M. Gupta

RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Citation : (1997) 2 AD 606 : (1997) 66 DLT 861

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Randhir Jain, Ad, for the Appellant;

Judgement

S.N. Kapoor, J.

(1) This revision challenges an order allowing the application for amendment seeking relief of cancellation of draw of lots held on 22nd March, 1992 of the allotment of the flats at Plot No. 3, Block 17, Geeta Colony, Delhi-31.

(2) The respondent is a member of the petitioner/Society According to his version, the office bearers of the Society have manipulated the accounts and misappropriated funds of the Society in purchase and sale of the property of the Society. As such, the respondent felt dissatisfied and apprehending that the office bearers of the Society would manipulate the things, filed a suit for permanent injunction restraining the petitioner/Society from holding a draw of lots for the allotments of the flats. As the stay was not granted, the draw of lots had taken place on 22nd March, 1992. Hence the need to amend the plaint.

(3) The defendant/revision petitioner moved an application under Order 7 Rule Ii on the ground that the suit was barred by Section 60 and as such the suit was not maintainable under Order 7 Rule 11. That application was not disposed of. The respondent was directed to file written statement against that order. The petitioner/Society filed a revision petition. That revision petition has allowed on 4th May, 1992 with the direction to the learned Trial Court to "first dispose of the application filed by the petitioner/defendant under Order 7 Rule 11, CPC and

thereafter decide the injunction application". The revision petition was disposed of accordingly. That application under Order 7 Rule Ii had not been disposed of by the learned Trial Court as submitted by the learned Counsel for the petitioner. An application for amendment referred to above was moved by the plaintiff/respondent and that was allowed. The learned Counsel for the petitioner submitted that when the suit is barred by Section 60 of the Delhi Co-operative Societies Act, the amendment should not have allowed for that would amount to the perpetuating a wrong by making the petitioner/Society to face a vexatious trial. It was also contended by Mr. Randhir Jain, the learned Counsel for the petitioner that according to process of allotment itself, the draw of allotment of flats was held on 22nd March, 1992 "in the presence of the Joint Director (GH), Dda, Vikas Sadan, Ina, New Delhi and Assistant Registrar, Cgh, Office of Registrar Co-operative Societies, Old Court Building, Parliament Street, New Delhi.

(4) It is an admitted fact that the petitioner is a member of the Society. The matter is covered u/s 60 of Delhi Co-operative Societies Act. The relevant portion of Section 60 reads as under :

60. Disputes which may be referred to arbitration.-(1) Notwithstanding anything contained in any law for the time being enforced, if any dispute touching the constitution, management or the business of a Co-operative Society other than a dispute regarding disciplinary action taken by the Society or its Committee against a paid employee of the Society arises (a) xxx (b) between a member, past member or person claiming through a member, past member or deceased member and the Society, its Committee or any officer, agent or employee of the Society or liquidator, past or present, or (e) xxx (d) xxx

such disputes shall be referred to the Registrar for decision and no Court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(5) It is apparent that so far as the question of trial is concerned, it is a dispute between the plaintiff/respondent and petitioner/Society. The petitioner being a member of the Society and the dispute is not with the Society but with the office bearers of the Society who might have committed some acts of omissions or might have been guilty of indiscreet action, the petitioner is not seeking any relief in that respect. The petitioner is seeking relief only in respect of allotment of draw of lots that is covered by Clause (b) of Sub-section (1) of Section 60 of Delhi Co-operative Societies Act. Consequently, Civil Court shall not have any jurisdiction to entertain any suit or any other proceeding in respect of such a dispute. This being a legal bar, the learned Trial Court could not have allowed the amendment. It is not an ordinary matter where there is no legal bar seeking relief of the kind which is being sought to be introduced by way of amendment on account of subsequent event.

(6) In view of these peculiar circumstances of the dispute, amendment

application could not have been allowed. It is a matter which will lead to miscarriage of justice in case such kind of amendment is allowed and it is the matter which was required to be referred to the arbitration and to be decided by the Registrar, should be allowed to be dragged on in Civil Court.

(7) It may further be mentioned that an application for amendment cannot be allowed in such a matter for the opposite party cannot be compensated by payment of costs.

(8) For the foregoing reasons, I allow the revision petition and reject the application for amendment.

(9) A copy of this order be sent to the learned Trial Court through learned District Judge for information and to proceed in accordance with law. Learned Trial Court is expected to dispose of application under Order 7 Rule 11, CPC without being influenced by observation made in this order.