
(2004) 11 DEL CK 0032

In the Delhi High Court

Case No : Writ Petition (C) No. 4062 of 2004

Sh. Rajinder Pasrija

APPELLANT

Vs

Climex Coop. G/H. Society Ltd. and Others

RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Delhi Co-operative Societies Rules, 1973 — Rule 36

Citation : (2004) 11 DEL CK 0032

Hon'ble Judges : V.K. Jain, J;Anil Kumar, J

Bench : Division Bench

Advocate : Jinendra Jain and Hemant Gupta, for the Appellant; Rakesh Munjal and Archana Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—By filing this petition the petitioner has challenged the order passed by the Registrar Cooperative Societies as well as the Cooperative Tribunal, inter alia, praying that the Registrar Cooperative Societies ought to have given him an opportunity to make the payment; secondly it has been contended before us that the order of the Registrar Cooperative Societies is general in nature; thirdly it was contended before us that the petitioner has shifted his residence. Therefore, he did not receive the notices and the Tribunal has not taken that aspect of the matter into consideration by the Registrar as well as.

2. We have perused the record. The petitioner was sent registered notices on 16th December, 2001 for payment of Rs.25,000/- vide registered letter dated 7th December, 2001 and first notice dated 22nd January, 2003 was sent vide registered letter dated 24th January, 2003 for payment of Rs.54,200/-. Thereafter registered notices were sent on 15th March, 2003 and 19th May, 2003 and final notice was sent on 10th June, 2003. A public notice was published in the Indian Express on 6th July, 2003 and notice for expulsion was sent by the registered posts on 22nd July, 2003. The plea taken by the petitioner that the

notices were not sent on the correct address cannot be considered as genuine plea as a member of the Cooperative Societies has to inform the society the change of new address.

3. We have perused through entire record. No letter has been sent by the petitioner to the Society intimating the change of address. First time the petitioner represented at the time of hearing when the matter of expulsion was pending approval in the office of the Registrar Cooperative Societies that notices were not received by him as he has changed the address. Therefore, no credence can be given to such a member who does not inform the change of address, does not make the payment of the call money by the Society and thereafter take a plea that notices were not served on him.

4. Secondly, there is no force in the arguments of the learned counsel for the petitioner that the order passed by the Registrar Cooperative Societies is general in nature. We have perused the proceedings which has been reproduced in the writ petition itself. On 25th September, 2003 the matter was listed before the Registrar Cooperative Societies where one Sushil Chadha appeared for the petitioner. On that day also statement was made by the said Sushil Chadha that defaulter member will make payment, however, no payment was tendered by the petitioner. The matter was adjourned on 14th October, 2003. On that day also Sushil Chadha appearing for the petitioner did not have any power of attorney or any authority to appear on behalf of the petitioner, Therefore, he was directed to bring the authority from the petitioner as would be evident from the order passed by the Registrar Cooperative Societies which was reproduced by the petitioner at page 4 of the paper book. It was not stated on that day also that the petitioner was prepared to tender the whole amount. Again on 6th November, 2003 when the proceedings commenced before the Registrar Cooperative Societies which has been reproduced at page 5 of the paper book, Mr. Sushil Chadha appeared on behalf of the petitioner and filed his authority letter and again made a statement that he was prepared to make the payment without actually tendering the payment before the Registrar Cooperative Societies. It was in this background that the Registrar passed the impugned order on 11th November, 2003 holding that proper procedure has been followed as prescribed under Rule 36 of the Delhi Cooperative Societies Rule 1973 as Society has issued proper notice to the defaulter members through registered posts and have also produced proof of dispatch. A Society cannot achieve its objects of constructing the flats if timely payment was not made by the members. Appropriate procedure in accordance with law has been followed by the Cooperative Societies in expelling the petitioner on account of default. There is no discretion in the hands of the Registrar Cooperative Societies to allow said defaulter member to make payment and direct the Society to accept such member to be a member of the society. In any event such discretion has to be exercised keeping in view the objects of the Cooperative Society which cannot function and construct the flats if there is a default of even one single member as all the members who would be making payment of their share money and on account of defaults by other

members in making the payment, a large number of members who are making the payment in time suffers on account of either imposition of the burden of interest or increase in the costs of construction. It is contended by the counsel for the respondent that before the passing of the interim order by this Court, a new member was enrolled on 12th March, 2004. The interim order was passed by this Court on 22nd March, 2004. It was contended that this writ petition was filed on 5th March, 2004. We have perused the order sheet. For the first time this petition was listed on 22nd March, 2004. On that date, we had directed the petitioner to deposit a sum of Rs.1 lac in favor of the Society. We direct the society to refund the cheque to the petitioner forthwith. There is no merit in writ this petition.