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**(2013) 05 DEL CK 0564**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 2198 of 2012 and CM No. 4750 of 2012

Smt. Sadhna Chaudhary and Another

APPELLANT

Vs

Pradip Mehra and Others

RESPONDENT

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**Date of Decision :** 13-05-2013

**Acts Referred:**

Delhi Co-operative Societies Act, 2003 — Section 116, 25(3)

**Citation :** (2013) 05 DEL CK 0564

**Hon'ble Judges :** Sanjeev Sachdeva, J; Sanjay Kishan Kaul, J

**Bench :** Division Bench

**Advocate :** J.N. Aggarwal, for the Appellant; Ferida Satarawala, Advocate for R-2 and Mr. Sandeep Kumar, Advocate for R-3, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Sanjeev Sachdeva, J.—The writ petition arises out of an order dated 26.07.2011 in Revision Petition filed by the petitioners impugning the order of the Financial Commissioner dismissing the writ petitions filed by the petitioners herein. The Administrator of the R-3/Society had issued an advertisement in the newspaper on 02.10.2002, which reads as under:

It is hereby informed to the general public at large that a few vacancies are likely to arise in the J.N.C.H.B.S. Ltd. having its regd. Office at Jagriti Enclave, I.P. Extension-II, Delhi 110092 in view of this the desirous persons are requested to submit their application on plain paper through ordinary post at the registered office of the Society latest by 6th October, 2002.

Note: Any applications received after the due date shall not be entertained.

2. The advertisement stipulated that the applications were to be submitted latest by 06.10.2002. The advertisement mentions that few vacancies were likely to occur in R-3/Society.

3. Pursuant to the advertisement, the petitioners are stated to have made an

application on 02.08.2003. The application reads as under:

The Administrator

Jagriti Nagar Coop House Building Society

I.P. Extn. Part II, Road No. 75B,

New Delhi-110092.

Dear Sir,

Respectfully I crave your kind indulgence for sympathetic consideration of my enclosed application for enrolment of member in your esteemed society in place of vacancies likely to occur in the future. May I kindly draw your kind attention that application for enrolment as a member of the society is to be entered/recorded in a register to be maintained under the Cooperative Law/rules. No date for entertaining application for membership against the likely vacancies in the future can be imposed arbitrarily. Therefore before declining my request for membership, it may kindly be noted that it shall be open to me to take legal recourse for appropriate action seeking relief from High Court and appropriate administrative authorities.

4. We may note that the application itself states that the application is being made for enrolment of members in place of the vacancies likely to occur in the future.

5. The application of the petitioners for membership was not accepted by the Administrator vide order dated 14.10.2008. The Administrator held that since there were no vacancies in the Society and in terms of the orders passed by the Hon"ble Supreme Court of India in the case titled Joint Registrar of Cooperative Societies, Kerala V. Kuttapan & Ors, the Administrator had no power for the enrolment of new members in the Society.

6. Since the petitioner was not successful, the petitioner filed an appeal u/s 25 (3) of the Delhi Cooperative Societies Rules against the order passed by the Administrator dated 14.10.2008.

7. Vide order dated 20.04.2009, the Joint Registrar of Cooperative Societies dismissed the appeal of the petitioner thereby holding that the Administrator had (a) no power to advertise or fill up the vacancies and (b) the advertisement was given not in contemplation of any existing vacancies, but for future vacancies. The Joint Registrar Cooperative Societies held that the judgment of the Hon"ble Supreme Court referred to by the Administrator was not applicable in the facts of the present case since that judgment related to enrolment under the Karnataka Cooperative Societies Act. However, he noticed that even under the Rules as applicable to Delhi, the same position existed and the Administrator did not have the power to enrol new members.

8. Impugning the said order of the Joint Registrar, the petitioners filed a revision

petition u/s 116 of the Delhi Cooperative Societies Act before the Financial Commissioner. The said revision petition has been dismissed by the Financial Commissioner vide the order dated 26.07.2012. The Financial Commissioner while dismissing the revision petition has held that a vacancy would become a vacancy only after the Society intimated the factum of such vacancy to the Registrar and obtained his approval and clearance. The Financial Commissioner further held that the advertisement of 02.10.2002 clearly indicated that such a stage had not reached and the advertisement talked of few vacancies which were likely to occur. He further held that there was no definite commitment either to the number of vacancies or to the fact that they had actually become vacant. The Financial Commissioner came to the conclusion that the Administrator of the Society at the time of issuance of the advertisement, had either overstepped his authority or had proceeded in ignorance of law.

9. From perusal of the advertisement dated 02.10.2002 and the application of the petitioner dated 02.08.2003, it is apparent that the advertisement which was issued by the Administrator was not in contemplation of any vacancies which had either existed or for which any approval had been taken from the Registrar. The advertisement talks of vacancies likely to occur in the future and even the application had been submitted by the petitioners for future vacancies which may occur.

10. The application submitted by the petitioner on 02.08.2003 was way beyond the period as stipulated in the said advertisement of 02.10.2002 which had stipulated the last date as 06.10.2002. The factum that the application was belated was mentioned by the respondents in the counter affidavit filed to the revision petition, however, as the Financial Commissioner had come to the conclusion that the advertisement was not for any existing vacancies which had arisen and that there was no vacancy, so this does not find a mention in the order of the Financial Commissioner and rightly so. We may further note that the advertisement itself stipulates that any application received after the due date shall not be entertained. This stipulation is by way of an insertion by a separate note to the advertisement.

11. In our opinion there is no infirmity in the order passed by the Financial Commissioner inasmuch as there were no vacancies which were existing or which had been approved by the Registrar for which advertisement was given. The advertisement was given for future vacancies which had not as yet occurred. The application of the petitioners was also beyond time as stipulated by the advertisement and was thus liable to be rejected. We may further note that in terms of the Act and Rules, the Administrator could not have filled up such vacancies and thus could not have issued the advertisement.

12. We find no infirmity in the impugned order. The writ petition is accordingly dismissed leaving the parties to bear their own costs.