

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 3693/1994**

Reserved on : 2nd July, 2010

Pronounced on: 6th July, 2010

LAXMI COOP. GROUP HOUSING SOCIETY LTD. Petitioner

Through: None.

VERSUS

REGISTRAR COOP. SOCIETY & ORS.Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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JUDGMENT

VALMIKI J. MEHTA, J

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India by the petitioner society against the orders of

the Delhi Cooperative Tribunal dated 25.4.1994 and 6.6.1994. The respondent No.3 had initiated Arbitration proceedings under Section 60 of the Delhi Cooperative Societies Act against the excess interest claimed by the society/petitioners herein and the ward and maintenance charges claimed by the petitioner society/petitioners herein and the ward and maintenance charges claimed by the petitioner society. The arbitration petition was however dismissed on 21.6.1993 and in the appeal before the Tribunal, the Tribunal remanded the matter back to the arbitrator setting aside the Arbitration Award dated 21.6.1993. The arbitrator however again dismissed the claim of the respondent No.3 herein vide order dated 21.2.1994. An appeal was preferred before the Delhi Cooperative Tribunal which was partly accepted by the Tribunal by an order dated 25.4.1994 wherein the respondent No.3 was entitled to refund of excess charges paid by the respondent No.3 over and above 3% penal interest. A review was filed against the order by the petitioner herein which was dismissed vide order dated 6.6.1994. It is these two orders which are sought to be challenged by the petitioner herein.

2. There are two main issues in the present case. The first is with regard to the rate of interest to be charged upon the respondent No.3, who was admittedly a persistent defaulter as he had made repeated defaults in paying monies towards construction of the flats. The second issue

pertains to the watch and ward and maintenance charges claimed by the petitioner society with respect to the flat till the possession of the same was handed over to respondent No.3.

3. This case is effective No.2 on the 'Regular List' but no one has appeared on behalf of the parties and the case was dismissed for non-prosecution on 3.2.2009 and was thereafter restored on 25.8.2009. We have therefore perused the record and are proceeding to pronounce this judgment.

4. We feel that the present petition is liable to be partly allowed.

5. So far as the first issue is concerned, the Delhi Cooperative Tribunal has rightly observed that the actions of the society to claim a higher rate of interest cannot be sustained inasmuch as there is a statutory provision which covers the field and as per which penal interest can only be charged at 3% above the normal rate. The relevant portion of the decision of the Delhi Cooperative Tribunal and with which we agree is as under:-

“4. I find that it is a fact that the appellant had been a persistent defaulter and he had failed to make the payments on demands issued to him. For this he is liable to pay interest together with the penal interest. At the same time, I am constrained to observe that the rate of penal interest at the rate of 24% per annum over and above the normal interest can, by no stretch of imagination, be held to be

justified. It is totally exorbitant and excessive and is also against the bye-laws of the respondent-society as also of the Act and the rules framed thereunder. The prescribed rate of penal interest is not more than 3% per annum. (Do this maximum calling of penal interest at 3% need any upward review by now in view of the changing/changed situations? That is for the Registrar, Cooperative Societies to consider and decide). The arguments of the representative of the respondent-society that this rate of interest having been approved by the General Body through its resolution does not have the sanction of law. After all, the General Body has also to function in keeping with the provisions of the bye-laws, the Act and the Rules on the subject. I, therefore, hold that at present the penal interest could be charged at the rate of 3% per annum only over and above the ordinary rate of interest and the decision to the contrary taken by the learned Arbitrator does not hold good. The appellant is entitled for refund of the amount charged over and above the 3% penal interest.”

6. However, so far as the second issue is concerned we feel that the Delhi Cooperative Tribunal has clearly erred. The Delhi Cooperative Tribunal has held that there is a double jeopardy if the respondent No.3 is called upon to pay the interest on the delayed payments and also for the watch and ward and maintenance of the flat. We feel that this reasoning is clearly perverse because interest towards balance payment of a flat is a totally different claim than the actual expenses which are incurred towards watch and ward and maintenance of a flat which respondent no.1 could not take possession because of his own defaults in not making the balance payment. Once the respondent No.3 himself failed to make

payment and therefore could not take possession of the flat, such flat had to be looked after and maintained and for which the society had to incur the necessary charges towards watch and ward and maintenance. There is no element of double jeopardy as is the finding of the Delhi Cooperative Tribunal. Clearly, this portion of the decision of the Delhi Cooperative Tribunal is against the law and besides being perverse would lead to grave injustice to the society when it has been forced to incur expenditure on account of respondent No.3 who admittedly persistently defaulted in making payment of his dues.

7. Accordingly we partly accept this petition by restoring the decision in the Award dated 21.2.1994 whereby the respondent No.3 has been directed to pay charges at the rate of Rs.50 per day for delay till taking possession of the flat by the respondent No.3 and which are the charges towards watch and ward and maintenance of the flat. The writ petition is however dismissed with respect to the challenge to the finding that the society will not be entitled to claim interest at 24% per annum over and above the normal interest and we hold that it can only claim 3% interest over the normal rate of interest.

8. The petition is accordingly partly allowed leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J.

JULY 06 , 2010
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SANJAY KISHAN KAUL, J