

THE NEW FRIENDS CO-OPERATIVE HOUSE BUILDING SOCIETY LTD. A

v

RAJESH CHAWLA AND ORS.

APRIL 21, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.] B

Constitution of India, 1950:

Article 226—Co-operative Society—Election—Rejection of nomination papers on ground of being “defaulters”—High Court holding the demands raised as unsustainable—Further directing refund to other members also—Held, order of High Court is unsustainable—Issue as to whether one is a member or not is to be adjudicated in appropriate proceedings and writ application prima facie was not a proper course—Even otherwise, it could be only for limited purpose of election, and rights and liabilities of parties would be subject to decision by statutory forum. C D

Respondents No. 1 to 3 filed nomination papers for election to the post of President, Member and Vice President, respectively, of the appellant-Society. Meanwhile, a defaulters' list was prepared and nomination papers of the respondents were rejected. They filed a writ petition before the High Court praying, *inter alia*, for quashing the election notification and for direction to prepare fresh defaulters' list after holding a necessary inquiry. The High Court held that respondents 1 to 3 were not defaulters and demands raised against them were unsustainable. It further observed that there might have been many members to whom similar demands were issued and they were also entitled to refund of the amount from the Society. Aggrieved, the Society filed the present appeal. E F

Disposing of the appeal, the Court

HELD: 1.1. The question whether a member was defaulter had to be adjudicated in appropriate proceedings and writ application *prima facie* was not a proper course. Further, direction for refund to other members, who have not even approached the Court, is without application of mind and totally uncalled for. High Court's order is consequently unsustainable. [492-B-E] G

- A** 1.2. Assuming that the stand taken for the alleged defaulters can be entertained and gone into in the course of conduct of election, it could, if at all, be only for the limited purpose of election; and rights and liabilities of the parties would finally and effectively get adjudicated by arbitration proceedings provided for under the statute in lieu of proceedings before civil court; and the conclusions arrived at or recorded in the course of election proceedings shall be only without prejudice to and ultimately subject to all or any such proceedings and decisions by such statutory forums. In any event without proper hearing and consideration of relevant materials, High Court seems to have arrived at abrupt conclusions. [492-B-D]
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- C** 2. The judgment of the High Court is set aside and the matter is remitted back to it for fresh adjudication. Respondents 1 to 3 have filed application before the Registrar of Cooperative Societies for referring the dispute to arbitration, which alone is the proper procedure to get their civil liability finally and effectively adjudicated. The High Court shall, in this view of the matter, consider the desirability of adjudicating the issues raised in the writ petition. [492-F-G; 493-A-B]
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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 538 of 2004.

From the Judgment and Order dated 29.7.2003 of the Delhi High Court in C.W.P. No. 895 of 2003.

E A.K. Thakur for K.K. Gupta for the Appellant.

Siddhartha Dave for Ms.Vibha Datta Makhija for the Respondents.

The Judgment of the Court was delivered by

F **ARIJIT PASAYAT, J.** The appellant-society calls in question legality of the judgment rendered by Division Bench of the Delhi High Court whereby it was held that respondents 1 to 3 were not defaulters and, therefore, demands raised against them for the period prior to 4th August, 1984 were unsustainable. Respondents nos. 1 to 3 were the writ petitioners nos. 1 to 3

G in the writ petition filed by them before the High Court. There was further direction given by the High Court that there may have been many members to whom similar demands have been sent. They were also entitled to refund of any payment taken by the society from them.

H Writ application was filed by the respondents with prayer to quash the order dated 1.2.2003 issued by the Election Officer of the appellant-society

and for setting aside the orders dated 23.1.2003 passed by him and for a direction for carrying out fresh inquiry regarding defaulters. They had filed nomination for the post of President, Member and Vice-President of the society for the election which was scheduled to be held on 1.2.2003. A bare reading of the writ petition shows that they were not satisfied with the list of defaulters prepared. The writ petition was filed on 8.1.2003. An affidavit was filed by the Secretary of the appellant-society indicating as to how the stand of the writ petitioners about they being not defaulters was not correct. It has been specifically pointed out that in the petition before this Court that the books of accounts and correspondences were produced on 9.7.2003. Matter was listed on 25.7.2003 but no hearing took place on account of lawyers' strike at the Delhi High Court. But the appellant's officers were present in the Court with the books of accounts and the records.

The High Court seems to have adjudicated as to whether the writ petitioners were defaulters or not. Reference was made to a letter dated 4.8.1984 wherein it has been stated that no dues were outstanding against Shri Rajesh and Shri Rajiv Chawla holders of plot no. 230, Sector VIII. Whether there was any amount outstanding would not normally and could not effectively and finally be adjudicated in a writ petition and that too filed against a decision incidentally rendered in the course of election proceedings by the Election officer. Separate forums are available in the statutory governing and functioning of co-operative society whereunder only such issues affecting substantial civil rights of parties could be got adjudicated. The High Court seems to have not considered all such relevant aspects and seems to have proceeded superficially and summarily. Prayer in the writ petition was to the following effect:

“(i) Issue a writ in the nature of Mandamus or any other like writ or order or direction directing the second and the third respondent to enquire into the alleged List of Defaulters submitted to them by the present Managing Committee of the Society;

(ii) Issue a writ in the nature of Mandamus or any other like writ or direction or order directing the second and the third respondent to prepare, after holding the necessary enquiry, a fresh and actual List of Defaulters of the members of the Society;

(iii) Issue a writ of Certiorari or any other like writ or direction or order quashing the Notification dated 6.01.2002 proposing to hold elections of the Managing Committee of the Society on the 1.2.2003;

- A (iv) Issue a writ of prohibition or like writ, order or direction, prohibiting the respondent nos. 5 and 6 herein from holding the election of the members of the Society on 1.2.2003; and
- (v) pass such other and further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to do complete justice between the parties."
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The question whether a member was a defaulter had to be adjudicated in appropriate proceedings and writ application *prima facie* was not a proper course. Assuming without accepting that the stand taken for the alleged defaulters can be entertained and gone into in the course of conduct of election, it could, if at all be only for the limited purpose of election and the right of the society or the member for having their rights and liabilities finally and effectively get adjudicated by arbitration proceedings statutorily provided for under the statute in lieu of proceedings before civil court, and the conclusions arrived at or recorded in the course of election proceedings shall be only without prejudice to and ultimately subject to all or any such proceedings and decisions by such statutory forums. In any event without proper hearing and consideration of relevant materials, High Court seems to have arrived at abrupt conclusions. High Court's order is consequently unsustainable for more than one reason. To add further to the vulnerability of the High Court's judgment is the direction given for refund and in favour of those who have not approached the Court also, as though it is deciding statutory Arbitration proceedings, envisaged under the Co-operative Societies Act concerned. It was no body's case that any other person has been illegally asked to pay, or that any such collection has been illegally made. Direction for refund to other members is without application of mind and totally uncalled for. The records and correspondences were apparently called for. If the High Court wanted to decide the matter it should have been done after looking into them which has not been done. Even such decision, as noticed above, should be made subject to any adjudication in the Statutory Arbitration proceedings and not to decide finally the civil liabilities *inter se* of parties. Therefore, we set aside the judgment of the High Court and remit the matter back for fresh adjudication. We make it clear that except quashing the directions given for refund to other members and restraining the High Court from giving any such directions, rest of the matter shall be adjudicated on its own merit in accordance with law and such exercise could only be for the limited purpose of treating the person(s) concerned "defaulters or not" for participating in the election process and not for foreclosing the right of the society to recover any amount

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as such, through the forums prescribed under the concerned Co-operative Societies Act and in accordance with law. A

It appears that respondents 1 to 3 have filed application before the Registrar of the Society on 27.8.2003 for referring the dispute to arbitration, which alone is the proper procedure to get their civil liability finally and effectively adjudicated. The High Court shall consider the desirability of adjudicating the issues raised in the writ petition in view of the recourse taken by respondents 1 to 3 (writ petitioners before the High Court) themselves before the Competent Authorities, availing already of their effective remedies. The appeal is accordingly disposed of. There shall be no order as to costs. B

R.P.

Appeal disposed of. C