

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1298 OF 2009
[Arising out of SLP(C) No.30580 of 2008]

ASHA MISHRA

... **Appellant(s)**

Versus

NATIONAL COOP.GROUP HOUS.SOCIEY LTD.&ORS

... **Respondent(s)**

ORDER

Leave granted.

This appeal is directed against the order dated 16th September, 2008, passed by the Delhi High Court in C.M. No.12650 of 2008, filed in writ petition(C) No.6934 of 2007, wherein the appellant had prayed for an order to treat the said application as part of the main writ petition and to set aside the further demands raised in paragraphs 7 and 8 of the application. For the sake of convenience, the order of the High Court dated 16/09/2008 is reproduced hereinbelow:

“As on date, a sum of Rupees 5,42,596/- is claimed by the Respondent Society against the Petitioner upto June, 2007. The flat in question has not been completed/finished. In order to expedite possession of the Flat being handed-over to the Petitioner th respondents(Petitioner) submits that a sum of Rupees 1,50,000/- may be deducted from the amounts due since this would be the amount

defrayed by the Society towards completion of the Flat. Learned counsel for the respondents(Petitioner) states, on instructions, that the Society would be willing to adjust the sum of Rupees 1,50,000/- from the amounts due and payable by the Petitioner under various heads, which, as stated above, stood at Rupees 5,42,596/- upto June, 2007.

Mr. Chetan Sharma, learned Senior Counsel for the Petitioner states, on instructions, that the sum of Rupees 2,92,596/- arrived at by adjusting Rupees 1,00,000/- already deposited in these proceedings, shall be paid to the Respondent Society within four weeks from today. On the payment of the said sum possession of the Flat in question, namely A-35, shall be handed over to the Petitioner forthwith. The claims of the rival parties shall be adjudicated in the final hearing of this Petition.

This arrangement pertains to demands that have been raised upto June, 2007. Demands arising thereafter shall be paid by the Petitioner diligently. The said arrangement is without prejudice to the rights and contentions of either parties.

Application is disposed of.”

Mr. Ranjit Kumar, learned senior counsel appearing for the appellant, points out that the order impugned relates to handing over of possession of the flat in question to the appellant, subject to payment of certain dues, which had been agreed upon and at the same time there was also a direction that demands raised by the respondent-society after June, 2007, would also have to be paid, but without prejudice to the rights and contentions of the parties.

Having heard Mr. Ranjit Kumar, learned senior counsel for the appellant,

and learned counsel for the respondent-society, and having regard to the fact that the appellant has been waiting for possession of the flat in question since 2003, we are of the view that the order impugned has to be given a pragmatic meaning so that, on the one hand, the appellant is able to obtain possession of the flat and at the same time the demands of the society are also paid subject to the final decision in the writ petitions pending before the High Court.

However, before we proceed to do so, it should also be kept in mind that the payment of demands raised after June, 2007, has been linked by the society to possession being made over to the appellant. We must also keep in mind the fact that the appellant has also not paid the amounts, as was directed by the order of the High Court, within the time specified. It is because of these two reasons that the matter is now before us.

Having considered the submissions made and the facts as indicated above, we are inclined to modify the order of the High Court to the extent of extending the time for depositing the balance amount of Rs.2,92,596/- payable, after adjustment of Rs. one lakh, which has already been deposited.

We, therefore, extend the time for making the deposit of the said balance amount till 16th March, 2009. On payment of the said amount, the society shall forthwith hand over possession of the flat in question to the appellant.

As far as payment, with regard to the demands raised after June, 2007 is concerned, it is made clear that such payments shall be made by the appellant

without prejudice to her rights and contentions and such payment would be subject to the final decision of the High Court in the pending writ petitions.

The appeal is allowed to the aforesaid extent.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi,
February 25, 2009.

