

Case No.121/2014

16.04.2015

Present : Ms. Preeti Chugh, Counsel for Appellant
: Col. Yogesh Abbi on behalf of Respondent

1. Assistant Registrar vide impugned order dated 06/06/2014, decided an appeal under Section 91 of the DCS Act, 2003 filed by the Appellant against the decision of Society's Managing Committee for not granting membership to the appellant who had purchased the flat No. D-510 through registered Sale Deed from Sh. Girish Luthra. Assistant Registrar directed the appellant (respondent herein) to deposit the transfer fee, share money and admission fee as per provision of the bye laws of the society and the managing committee of respondent society shall grant membership to the applicant within 30 days after the deposit of requisite amount.

2. Society filed present appeal against this order u/s 112 of the DCS Act before this Court. The issue of maintainability was considered first. In support of maintainability, society submitted that the appeal is maintainable as per section 112 (2)(d) of DCS Act, 2003 and further cited the following judgements of this Court :

- (i) An order of this Court dated 24/04/2014 pertaining to "The Water and Power Engineers CGHS Ltd. Vs. RCS and Anr.".
- (ii) Financial Commissioner's order dated 25/07/2013 pertaining to appeal u/s 112 of the DCS Act, 2003 in case No. 106/2011 in the matter of Smt. Madhu Sharma, Appellant and RCS & the Kangra Adarsh Cooperative Society dealing with membership of society u/s 91 of the DCS Act, 2003.

3. I have heard the Counsel at length and perused the record. As far as orders dated 24/04/2014 and 25/07/2013 of my Ld. Predecessors are concerned, I refrain from commenting upon the same as each case was decided by my predecessors considering facts and circumstances of each case.

4. Counsel for Petitioner insisted that the matter is appealable under section 112 of the DCS Act, 2003 which is reproduced below :

"112. (1) Subject to the provisions of section 113, an appeal shall lie under this section against-

- (a) an order of the Registrar made under sub-section (2) of section 9 refusing to register a co-operative society;***
- (b) an order of the Registrar made under sub-section (4) of section 12 refusing to register an amendment of the bye-laws of a co-operative society;***
- (c) an order of the Registrar made under sub-section (1) of section 17;***
- (d) disputes relating to election under section 35;***

- (e) an order of the Registrar removing the committee of a co-operative society made under section 37;
- (f) a decision of a co-operative society expelling any of its member under section 40;
- (g) an order made by the Registrar under section 64 apportioning the cost of an inspection held under section 61 or an inquiry made under section 62;
- (h) an order of surcharge under sub-section (2) of section 66;
- (i) any decision made under section 70;
- (j) any deemed admission of case under sub-section (3) of section 70;
- (k) any decision or award made under section 71;
- (l) application for implementation of award for vacating possession of flat or plot under sub-section (7) of section 83;
- (m) expulsion from the membership under sub-section (3) of section 86;
- (n) an order made by the co-operative society or the Registrar under section 95 or section 96 or section 97 directing the winding up of a co-operative society;
- (o) any order made by the liquidator of a co-operative society in exercise of the powers conferred on him by section 101;
- (p) any order made under section 107; and
- (q) a decision of a co-operative society refusing to admit any person as a member of the co-operative society who is otherwise duly qualified for membership under the bye-laws of the co-operative society.

(2) An appeal against any decision or order under sub-section (1) shall be made within sixty days from the date of decision or order –

- (a) if the decision or order falls under clauses (d), (f) (g), (h), (i), (j), (k) and (m) of sub-section (1), to the Tribunal;
- (b) if the decision or order falls under clause (e), to the Government;
- (c) if decision or order falls under clause (l), to the court of Metropolitan Magistrate; and
- (d) in any other case, to the Government or the Registrar according as the decision or order was made by the Registrar or any other person.

{ (3) No appeal shall lie under this section from any decision or order by the Registrar in appeal. }

5. While referring to section 112 (2)(d), Ld. Counsel for Petitioner argued that appeal can be made ‘*in any other case*’ to the Government or the Registrar according as the decision or order was made by the Registrar or any other person. The use of words “any other case” in this section means the cases which are not covered under section 112 (2) (a) to 112 (2) (c). As per sub Section 2 of 112 of DCS Act, 2003, appeal lies before Financial Commissioner against the orders covered under clauses a, b, c, e, n, o, p & q of 112 (1) of DCS act. As can be seen, order passed by Assistant Registrar does not fall into any of the categories specified therein. Further, I find that sub section 3 of

Section 112 bars further appeal under this section from any decree or order by the Registrar in appeal. As is evident, the impugned order herein is passed by Assistant Registrar in appeal filed by the respondent herein.

6. Considering the above facts, I hold that no appeal lies under section 112 of DCS Act against the impugned order dated 06.06.2014 passed by the Asstt. Registrar(SW). Accordingly, the appeal is dismissed *in limine*.

7. File be consigned to record room after completion.

-sd-

(DHARAM PAL)
Financial Commissioner, Delhi
16th April, 2015