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

% *Date of Decision: 08th July, 2025*

+ CM(M) 1168/2025 & CM APPL. 39348-39350/2025

HARISH CHANDER PANDEY

.....Petitioner

Through: Mr. Shambhu Nath Singh and Mr.
Sagar Chhabra, Advocates along
with petitioner in person.

versus

THE JAG JIVAN COOPERATIVE HOUSE BUILDING SOCIETY
LTD.

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner-Mr. Harish Chander Pandey filed a suit seeking declaration and permanent injunction. His such suit (Civil Suit No.718/2019) is against Jag Jivan Cooperative House Building Society Ltd. and its Secretary and, admittedly, said Society has also filed a suit against Mr. Harish Chander Pandey, which has been registered as Civil Suit No.4/2020.
2. Both the suits are pending adjudication before the same Court of learned District Judge.
3. During the proceedings of the abovesaid two suits, Mr. Harish Chander Pandey moved an application seeking amendment in his plaint and also corresponding amendment in his written statement.
4. His said two applications have been dismissed by the learned Trial



Court *vide* common order dated 03.02.2025 and such common order is under challenge.

5. Plaintiff-Mr. Harish Chander Pandey is seeking declaration and permanent injunction and, in nutshell, claims in his suit that he is in peaceful possession of the suit property since 1992, when he was appointed as Head Priest of Shri Ram Mandir situated within the complex of said Society. According to him, he was, initially, getting monthly salary of Rs.700/- and he used to conduct religious duties like conducting Pooja, offering Bhog/Prashad to the devotees etc. According to him, as per the arrangements, he was entitled to all the sacred offerings, to the exclusion of others. Since the number of devotees increased with the passage of time, there was corresponding increase in the offering of Bhog/Prashad. As per the initial agreement, he used to receive all such offerings but after such increase, the defendants became greedy and gave direction that the entire amount of the offerings be, rather, put in the donation-box, to be used by both the sides in a mutual agreeable manner.

6. According to petitioner, his salary as Head Priest was, gradually, increased to Rs.2500/- per month and despite his persistent request, such salary was, thereafter, never increased and rather the defendants were threatening to evict him from the suit property, without any legal ground. Defendants also stopped sharing the offerings put in donation-box and, therefore, it has become difficult for him to make his both ends meet.

7. It was in the abovesaid factual backdrop that he filed said suit with the following prayers:

“(a) Pass a decree of declaration that the plaintiff has equal right on the offerings put in donation box of the temple and will be shared equally by the plaintiff and defendant No.1;



(b) Pass a decree of permanent injunction in favour of the plaintiff and against the defendant No.1 & 2, thereby restraining defendant No.1 & 2, their agents, employees, workers, heirs, legatees, representatives and assignees from removing or threatening to remove the plaintiff from the suit premises bearing address Shri Ram Mandir, D-4, Vasant Kunj, New Delhi 110070; and

(c) Pass any other order which this Hon'ble Court deem fit and proper may also be passed in favour of the plaintiff and against the defendants.”

8. While resisting the abovesaid suit, the defendant Society also filed a suit for possession with the following prayers:-

“1) A decree for possession may be passed in favour of Plaintiff and against the defendant in respect of property in suit i.e the tin-shed situated near Sri Ram Mandir, D-4, Vasant Kunj, New Delhi 110070, more specifically shown in red colour in the site plan attached;

2) A decree for injunction may be passed in favour of the plaintiff and against the defendant thereby restraining the defendant, his agents, associates from creating any third party interest in respect of the tin-shed situated near Sri Ram Mandir, D-4, Vasant Kuni, New Delhi 110070, more specifically shown in red colour in the site plan attached more specifically shown in red colour in the plan attached.

3) A decree for damages/ use and occupation charges at the rate of Rs. 15,000/- per month may be passed in favour of the plaintiff and against the defendant with Future damages/use and occupation charges at the rate of Rs. 15,000/- per month may be awarded till the Plaintiff is placed in possession of the suit property.

4) Pendentlite and future interest at the rate of 15% per annum may be passed in favour of the Plaintiff and against the defendant.

5) Cost of the suit may be awarded,

6) Any other relief that the court may deem(s); fit in the circumstances of the case may also be granted in favour of the plaintiff and against the defendant.”

9. The petitioner came up with request for amendment in the plaint as well as in the written statement while contending that he was not setting up



a new case and rather wanted to elaborate and explain the facts which had already been stated in his plaint as well in the written statement filed by him with respect to the suit filed by the Society. He also contended that such amendment was not going to change the nature of the suit and would, rather, assist the Court in resolving the controversy in a better and effective manner.

10. Fact remains that, by virtue of such proposed amendment, he wanted to incorporate fact that he was member of the abovesaid Society and being member, he even paid a sum of Rs.1,64,000/- as land-money to defendant Society and since the defendant Society failed to allot residential flat to him, despite his fulfilling all the prescribed conditions and bye-laws etc., he was, rather, put in possession of a tin-shed, adjacent to the Ram Mandir. According to him, since he was a member of the Society, he was entitled to a decree of declaration to the abovesaid effect and, therefore, he wanted to incorporate relevant averments and also the following prayer in his suit:-

“aa. Pass a decree of declaration in favour of plaintiff that the plaintiff being membership no. 1054 of defendant no. 1 society having equal right as any other member to receive the residential flats from defendant no. 1 society and having fundamental right to manage the religious affairs of Shri Ram Mandir Temple, D4, Vasant Kunj, New Delhi - 110070 and thereby to stay in the adjacent residential facility in the vicinity of said Temple.”

11. Such request of amendment has been declined by the learned Trial Court.

12. The suit was filed by the petitioner herein way back in the year 2019 and if he was of the view that he was member of the abovesaid Society and that despite his fulfilling all the eligibility conditions and requisite parameters, he had not been allotted any flat by the Society, there was no



one to prevent him to make requisite assertion with appropriate prayer when the suit was, initially, instituted.

13. Learned counsel for the petitioner submits that since the matter was pending adjudication before the Hon'ble Supreme Court at the relevant time, the petitioner was in no position to seek any such relief. He also refers to Para 11 of the plaint and submits that the petitioner never came up with any new averment and even at the time of the institution of the suit, he had made it very clear that he was member of the Society.

14. It will, now, be relevant to see the averment made in Para 11 of the plaint as well as the corresponding reply as appearing in the written statement.

15. Para 11 of the plaint reads as under:-

"11. It is contended by the plaintiff that apart from the defendant no. 2 nobody else is forcing him out of the suit premises and that it is a matter of great shame that the head priest of a holy temple is being forced out of the temple for satisfying the greed of the defendants. The defendants are threatening the plaintiff everyday by stating that "ye mandir hamara hai, ye society bhi hamari hai, society me 500 se zada member hai" in order to force plaintiff to leave the suit property by mentally pressurizing him. The plaintiff further states that the defendants had also made the plaintiff as a member of the society by receiving a sum of Rs. 1,65,000/-. The copy of bank memo is annexed as ANNEXURE E."

16. Relevant para of the corresponding reply as appearing in the written statement filed by the Society reads as under:-

"11. Contents of Para no.11 of the plaint as stated are wrong and are denied. It is denied that apart from the defendant no. 2 nobody else is forcing him out of the suit premises. It is also denied that it is a matter of great shame that the head priest of a holy temple is being forced out of the temple for satisfying the greed of the defendants. The shame is on the part of the plaintiff who when came to the Mandir and joined the Mandir was having no income and no place



for his residence and the residence of his family. The management of the Mandir started paying nominal honorium to the plaintiff and because of passage of time the devotees, who came to mandir started calling the plaintiff at their place for puja etc and the plaintiff started earning by getting "Dakshina" and now the plaintiff is raising voice to grab the property of the defendants and the mandir premises. It is also denied that the defendants are threatening the plaintiff everyday by stating that "ye Mandir harriara hai, ye society bhi hamari hai., society me 500 se zada member hai" in order to force plaintiff to leave the suit property by mentally pressurizing him. The defendants are filing separate proceedings against the plaintiff for possession etc. The defendants have no intentions to forcibly dispossess the plaintiff. It is also denied that the defendants had also made the plaintiff as a member of the society by receiving a sum of Rs. 1,65,000 /-."

17. Thus, as per the petitioner, with respect to the abovesaid membership, he had made payment of Rs.1,65,000/-.

18. Undoubtedly, in the written statement, such fact, was though, denied by the defendant Society but after the abovesaid application seeking amendment was filed, the defendant placed on record voucher dated 27.05.1998 to show that even such amount of Rs.1,64,000/- had been duly refunded to the plaintiff.

19. Plaintiff, however, disputed the abovesaid refund but fact remains that abovesaid amount was duly credited in the bank account of the plaintiff.

20. Faced with the above, the plaintiff came up with a novel contention and, according to him, such credited amount had nothing to do with the refund of his membership Fee but it was return of the excess money that had been paid by him to the defendant Society.

21. This looks even more surprising and little bizarre.

22. The petitioner, for the reasons best known to him, has not made it clear as to what was the occasion for him to have made excess payment of



Rs.1,64,000/-, that too, way back in the year 1998.

23. Thus, the stand taken by the petitioner seems completely awkward and unbelievable.

24. Moreover, if the petitioner was of the view that he is entitled to any such membership, he could have easily prayed for the abovesaid relief when the suit was instituted and merely because some matter was pending in the Hon'ble Supreme Court would not, in itself, indicate that he was precluded from making a prayer to the abovesaid effect, in his plaint.

25. The learned Trial Court has, after careful perusal of the entire matter and appreciating the rival stand taken by the respective parties, has declined the request for amendment while observing, *inter alia*, as under:-

“20. Thus, the plaintiff is entirely changing the nature of the suit i.e. earlier suit was for declaration that he is entitled to have 50% in the offerings of the donation box along with defendant no. 1. Now by way of proposed amendments, he is seeking entirely different prayer in the form of decree of declaration that he is entitled to receive the residential flats from defendant no. 1 society by virtue of deposit of Rs.1,64,000/- with the defendant no. 1 society in the year 1998. There is not a single whisper in the suit filed by him or in the written statement filed in the suit bearing No. 4/20 regarding the fact that he is (sic) the member of the defendant no. 1 society or that he is entitled to receive the residential flats or that he deposited Rs. 1,64,000/- towards land and share money with the defendant no. 1 society.

21. Not only this, the plaintiff Harish Chandra Pandey himself filed an application addressed to the SHO, PS Vasant Kunj South dated 01.11.2019 i.e. after filing the present suit on 01.10.2019. In the said application, he has claimed that he is working as Head Priest in Shri Ram Mandir for the last 27 years however the Secretary of the Housing Society is asking him to remove and has been threatening him to dispossess from the suit property. He further averred that he is earning his livelihood from the Mandir and there is issue of misappropriation of offerings of the donation box and therefore he prayed for taking action against them. Again there is not a single whisper (sic) in the said application that he had deposited any share money/ land money with the defendant no. 1 society for allotment of



residential flat in his favour or that he is member of the society or that on that account he is entitled to stay in the suit property. Rather he admits his possession in the suit property only in the capacity of Head Priest of Shri Ram Mandir.

22. *Further, the plaintiff is seeking the declaration that he is entitled to have residential flats pursuant to his membership of the society taken in the year 1998 but he has not been allotted any flat therein despite deposit of share/land money. As such, he is seeking the said relief of declaration after 26 years of the alleged deposit of land/share money with the defendant no. 1 society and I find substance in the argument of Ld. Counsel for defendants that how such a claim would be maintainable in view of the bar of law of limitation.”*

26. It is quite obvious that the plaintiff himself is not clear about his case.

27. He has not bothered to elucidate as to why he did not, immediately, take any step, once amount of Rs.1,64,000/- was credited back, in the year 1998, in his bank account. If he was of the view that he continued to be the member of the Society in question, he should have incorporated appropriate prayer when the suit was instituted. The attempt made by the petitioner in seeking amendment and by seeking incorporation of additional prayer is, quite obviously, going to change the entire nature and character of the suit and is also in detriment to the interest of Society and, therefore, the learned Trial Court was fully justified in rejecting such request of seeking amendment in his plaint as well as in the written statement in the corresponding suit.

28. Keeping in mind the peculiar facts of the case and stand taken in the pleadings by the petitioner herein, this Court does not find any compelling reason to interfere with the matter by invoking extra-ordinary supervisory powers under Article 227 of Constitution of India, particularly, when the discretion, while dismissing the amendment application, seems to have



2025:DHC:5471



been exercised in a judicious manner.

29. Finding no illegality or perversity in the order, the present petition is hereby dismissed in *limine*.

30. Pending applications, if any, stand disposed of.

31. It is, however, made clear that the observations made hereinabove are tentative in nature and shall not be construed as expression on merits of the case, as the parties are yet to adduce any evidence.

(MANOJ JAIN)
JUDGE

JULY 8, 2025/ss/SS