

OFFICE OF THE JOINT REGISTRAR/APPELLATE AUTHORITY  
REGISTRAR COOPERATIVE SOCIETIES, GOVT., OF NCT OF DELHI  
OLD COURT BUILDING, PARLIAMENT STREET,  
NEW DELHI-110001

No.: F.JR/RCS/U/s 91/Appeal/2020/ 1444 45

Dated.: 21/12/2020

IN THE MATTER OF:-

✓ Hukum Chand & Sons HUF  
(through its Karta Hukum Chand Aggarwal)

.....Appellant

Versus

Delhi Union Co-op House Building Society Ltd.,  
(Through its President/Secretary)

.....Respondent

Appeal filed on: 14.01.2020  
Arguments heard on.: 03.12.2020  
Order passed on.: 21.12.2020

Present : Sh Sanjay Chiripal, Ld Counsel for the appellant  
Sh S K Aggarwal, President of Respondent Society

ORDER

This order shall dispose of the appeal dated 13.01.2020 filed on 14.01.2020 under Section 91 of DCS Act 2003 by Hukum Chand & Sons HUF through its Karta Sh Hukaum Chand Aggarwal against letter dated 03.01.2020 of Delhi Union Co-op House Building Society Ltd., refusing to transfer membership in the name of Hukum Chand & Sons HUF.

The appellant had filed an application dated 03.12.2019 for transfer of membership in the name of Hukum Chand & Sons HUF with the society " Delhi Union Co-op House Building Society Ltd., " (hereinafter referred to as "society") through speed post received by the society on 04.12.2019. The appellant has stated that the application for transfer was complete in all respects and the society was obliged to grant membership within 30 days of 04.12.2019 as per provisions of section 91 of DCS Act 2003. The society instead of transferring the membership sent a letter dated 03.01.2020 which was dispatched on 06.01.2020 refusing to transfer membership in the name of Hukum Chand & Sons HUF on the ground that



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HUF is not eligible to become a member of a cooperative housing society and therefore the application has been filed. The appellant has challenged the refusal letter dated 03.01.2020 of the society on various grounds. The appellant has stated that letter dated 03.01.2020 issued by the society is bad in the eyes of law, is not sustainable in the eyes of law and is patently illegal, has been issued by ignoring prevalent law, is based on conjectures and surmises, that society failed to take a decision within 30 days of receipt of application, refusal letter dated 03.01.2020 has been dispatched after 30 days of receipt of application for transfer, society has ignored provisions of section 22 of DCS Act 2003 and that HUF is capable of becoming a member of a cooperative housing society, refusal letter dated 03.01.2020 has been issued based on reasons which are legally not tenable, because society is to take a decision based on Law and not as per understanding of Law/Act/Rules by the MC and because the society was bound to transfer the membership after having found the application for transfer of membership complete in all respects as per provisions of DCS Act 2003 and DCS Rules 2007. It has been prayed in the appeal to set aside the refusal letter dated 03.01.2020 of the society and to direct the society to transfer the membership in the name of Hukum Chand & Sons HUF in a time bound manner and issue a new share certificate with due endorsement on it.

Notices were issued in the appeal to the appellant and the society. Hearings were conducted on 05.03.2020, 29.09.2020, 15.10.2020, 03.11.2020 and 03.12.2020.

On 05.03.2020, society sought time to file reply. Ld Counsel for appellant filed two Judgments i. Zoroastrian Coop Housing Society Ltd versus District Registrar, Coop Societies of Hon'ble Gujarat High Court reported as (1997) AIR (Gujarat) 136 and ii. Jain Merchants Coop Housing Society versus HUF of Manubhai Kalyanbhai Shah of Hon'ble Gujarat High Court reported as (1995) 1 GLR 19 copies of which were also given to the President of the society. Society sought adjournment on 29.09.2020 and 15.10.2020 and was given last opportunity to file reply on or before 03.11.2020. The Society submitted its reply on 03.11.2020 copy of which was given to Ld Counsel for the appellant. On -3/12/2020, society through its President submitted its written submissions. Oral arguments were heard on 03.12.2020.

Society in its reply dated 03.11.2020 has contested the appeal primarily on the ground that HUF is not competent to become a member of a cooperative society. The society also stated in its <sup>reply</sup> appeal that appellant has not filed any document to show the existence of HUF and Sh Hukum Chand Aggarwal to be its

Karta. The society has further stated in the appeal that Judgments relied upon by the appellant are of Hon'ble Gujarat High Court which are with respect to Gujarat Cooperative Societies Act. The society further stated that the Judgments are not applicable in the present case. The society stated that application of Hukum Chand & Sons HUF was not maintainable and that decision on application was taken in meeting held on 25.12.2019. Society further stated that as per section 22 of DCS Act 2003, HUF is not qualified and eligible to become a member of a cooperative society in Delhi. Society has prayed for dismissal of appeal being not maintainable.

Society in its written arguments submitted on 03.12.2020 has stated that " core issue in the matter is whether an HUF is eligible to become/acquire membership in cooperative house building society." It has further stated that DCS Act 2003 is a complete code. Society has quoted Section 22 of DCS Act 2003 in support of its contentions. Society has stated that case of appellant does not fall in any category specified under section 22(1) of DCS Act 2003. Society has stated that appellant is not an individual and also not a firm or joint stock company or any other body corporate constituted under any other law and that HUF is not covered in clause 22(1)( e) of DCS Act 2003 and there is no notification by Government to make HUF eligible to be a member of a society and case of appellant does not come under proviso to Section 22 of the Act. Society has stated that judgments relied upon by the appellant have no relevance. Society has stated that application dated 03.12.2019 was received by it on 04.12.2019 and it was placed in the MC meeting on 25.12.2019 and hence the decision was taken within 30 days of receiving the application. The society has prayed for dismissal of the appeal as there is no merit in the appeal.

Ld Counsel for the appellant argued that the only ground on which the application for transfer of membership has been rejected by the society is that HUF cannot be granted membership in a cooperative society and no other ground has been taken by the society in its rejection letter dated 03.01.2020. Ld Counsel for the appellant submitted a chart showing comparison of Section 22 of Gujarat Cooperative Societies Act 1961 and Section 22 of DCS Act 2003. He further submitted Judgments on 03.12.2020, other than already submitted on 05.03.2020. The Judgments relied upon by the appellant are :- i. Zoroastrian Coop Housing Society Ltd versus District Registrar, Coop Societies of Hon'ble Gujarat High Court reported as (1997) AIR (Gujarat) 136, ii. Jain Merchants Coop Housing Society versus HUF of Manubhai Kalyanbhai Shah of Hon'ble Gujarat High Court reported as (1995) 1 GLR 19, iii. Wealth Tax Officer, Calicut versus C K Mammed Kayi (Since Deceased) through his Lrs. Of Hon'ble Supreme Court of India reported as (1981) AIR(SC) 1269 :: (1981) 1 Scale 620, iv. P Ramabhadra Raju versus Union of India (UOI) of Hon'ble Andhra Pradesh High Court reported as (1981) AIR(SC) 1269 ::

(1981) 1 Scale 620, v. The Commissioner of Income Tax versus Sodra Devi of Hon'ble Supreme Court of India reported as (1957) AIR(SC) 832 :: (1958) SCXR 1, vi. Seth Banarsi Das versus Wealth Tax Officer, Special Circle Meerut of Hon'ble Supreme Court of India (Full Bench) reported as (1965) AIR(SC) 1387 :: (1965) 2 SCR 355

Ld Counsel for the appellant submitted during arguments that provisions of Section 22 of DCS Act 2003 are pari materia with Section 22 of Gujarat Coop Societies Act 1961 on which the Judgment of Hon'ble Gujarat High Court in the matter of Jain Merchants Coop Housing Society versus HUF of Manubhai Kalyanbhai Shah is based. He further submitted that Hon'ble Supreme Court of India has held on various occasions that word "individual" includes HUF. In support of his contention he relied upon various Judgments submitted during arguments on 03.12.2020. He submitted that HUF is competent to contract under the Indian Contract Act. He further submitted that there is no bar either in the DCS Act 2003 nor in the DCS Rules 2007 nor in the society's bye-laws for HUF to become member of a cooperative society. He further submitted that all the documents as per the provisions of DCS Act 2003 and DCS Rules 2007 have been submitted with the application for transfer of membership and the society has not raised any kind of objections regarding the same either in its rejection letter dated 03.01.2020 nor in the reply to the appeal. He further submitted that Section 22 of DCS Act 2003 clearly allows membership to an individual and a firm, joint stock company and any other body corporate constituted under any law. He submitted that HUF being a group of individuals cannot be held to be not eligible to not become a member of a cooperative society. He further submitted that PAN card of Hukum Chand & Sons HUF submitted with application for transfer as also registered conveyance deed executed on 03.11.2008 by DDA in favour of Hukum Chand & Sons HUF are sufficient proof of existence of HUF in whose favour membership is sought. Ld counsel for appellant further submitted that during life time of Sh Hukum Chand Agarwal only he can be Karta of Hukum Chand & Sons HUF. He submitted that society is raising baseless objections as regards existence of HUF and further that once refusal letter dated 03.01.2020 has been issued by the society, no other or further grounds or objections can be taken by the society opposing membership of the appellant.

I have heard the arguments and have carefully gone through the documents on record, Judgments submitted by the Ld Counsel for the appellant and also written arguments of the society. The society in its rejection letter dated 03.01.2020 has stated that :

*" This is to inform you that as per our knowledge and understanding of the provisions of DCS Act 2003, an HUF who is the owner of a plot situated in the cooperative housing society, is not eligible to become member of a Cooperative Housing Society. Therefore your said application has been filed."*

It is correct that the society has not taken any other ground for rejection in its letter dated 03.01.2020 against which the present appeal has been filed. I have gone through the application for transfer of membership submitted by the appellant with the society. The appellant has annexed with the application a copy of registered conveyance deed registered in his favour on 03.11.2008 by DDA. The application for transfer of membership is in accordance with provisions of DCS Act 2003 and DCS Rules 2007 as all requisite documents have been annexed with it. The society has also not raised any objections as regards application for transfer of membership in its rejection letter dated 03.01.2020 nor in its reply dated 03.11.2020 nor in the written arguments submitted on 03.12.2020. The appellant is entitled to membership on this count.

The society has dispatched the letter dated 03.01.2020 on 06.01.2020 which certainly is beyond 30 days of the receipt of the application on 04.12.2019. There was no occasion for the society to have kept the letter pending till 06.01.2020 when according to it the decision on the application was taken in MC meeting dated 25.12.2019.

As regards argument of the society regarding existence of HUF in question, I am of the considered opinion that copy of PAN card and registered conveyance deed executed in favour of Hukum Chand & Sons HUF by DDA are sufficient proof of existence of HUF in question. Further, a cheque of Rs.605/- annexed by the appellant with application for transfer of membership drawn on Axis Bank indicates the account holder's name to be Hukum Chand & Sons (HUF). The contention of the society regarding existence of Hukum Chand & Sons HUF is thus rejected. The argument of the society that appellant has not produced any document to show that Sh Hukum Chand Aggarwal is Karta of Hukum Chand & Sons HUF is also not acceptable under facts and circumstances of the case.

I would now deal with the contention of the society as regards HUF not being eligible to become member of a cooperative society. The society has relied upon Section 22 of DCS Act 2003 to contend that it does not mention word HUF. The society has contended that Judgments placed on record by the appellant granting membership to HUF are based on Gujarat Coop Societies Act and are not applicable to DCS Act 2003.

The society has however not been able to produce anything to show that membership cannot be granted to HUF or that there is a bar on HUF to become a member as per provisions of DCS Act 2003 or DCS Rules 2007. The provision of Section 22 of Gujarat Cooperative Societies Act 1961 as dealt with in Judgment of Jain Merchants Coop Housing Society versus HUF of Manubhai Kalyanbhai Shah of Hon'ble Gujarat High Court reported as (1995) 1 GLR 19 relied upon by the Ld Counsel for the appellant reads as follows:-

*" 22 (1). Subject to the provisions of Section 25, no person shall be admitted as member of a society except the following, that, to say:-*

*(a) An individual, who is competent to contract under the Indian Contract Act, 1872;*

*(b) A firm, company, or any other body corporate constituted under any law for the time being in force or society registered under the Society Registration Act, 1860;*

Section 22 of DCS Act 2003 reads as follows:-

*22(1) : No person shall be admitted as member of a co-operative society except the following, namely:-*

*(a) An individual competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872);*

*(c) A firm, a joint stock company, or any other body corporate constituted under any law;*

Perusal of Section 22 of Gujarat Cooperative Societies Act 1961 and that of DCS Act 2003 shows that Section 22 of DCS Act 2003 is pari materia with Section 22 of Gujarat Cooperative Societies Act 1961. In view of the same, the contention of the society that Judgments placed on record by the appellant are not applicable cannot be accepted. Further I am of the opinion that there nothing in DCS Act 2003 and DCS Rules 2007 which bars grant of membership to HUF. The relevant portion of Judgment of Jain Merchants Coop Housing Society versus HUF of Manubhai Kalyanbhai Shah of Hon'ble Gujarat High Court reported as (1995) 1 GLR 19 reads as follows:-



".....In AIR (33) 1946 Nagpur 16 (supra) it was held while considering a case under Co-operative Societies Act that there was nothing in the Co-operative Societies Act to prevent a joint H.U.F. from becoming a Member of the Bank. Thus, the difference of the judicial opinion on this issue now is settled and as per the decision of the Apex Court in Wealth Tax Officer, Calicut vs. C.K.Mammed Kayi (since deceased) through his Lrs. Shri T.M.Pocjer and Others, read with The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs Sodra Devi, there is no scope of doubt that the H.U.F. may be considered as a single unit and thus there is nothing in the Act under consideration which prevents a H.U.F. from becoming a member of the Co-operative Society and accordingly second contention raised by Mr.Zaveri also fails."

As per Judgments placed on record by Ld Counsel for the appellant on 03.12.2020, word "Individual" occurring in Entry 86 of List I of the Seventh Schedule to the Constitution takes within its ambit a H.U.F. There is no doubt that H.U.F. being a group of individuals is included in word "Individual" and is competent to contract. In view of the above discussions, I am of the considered opinion that H.U.F. is eligible to become a member as per provisions of DCS Act 2003 and there is nothing which bars grant of membership to H.U.F. in DCS Act 2003 and DCS Rules 2007. All the contentions of the society in this regard are hence rejected.

In view of the above, the appeal is allowed and the refusal letter dated 03.01.2020 of the society is set aside. Since complete set of documents as per provisions of DCS Act 2003 and DCS Rules 2007 have been submitted by the appellant with the application dated 03.12.2019 for transfer of membership, the society is directed to transfer the membership in the name of Hukum Chand & Sons H.U.F. within two weeks from the date of receipt of this order. The appellant is at liberty to apply for a new share certificate in the name of the appellant.

*P.R. Tripathi*  
21/12/20  
(P.R. TRIPATHI)

**JOINT REGISTRAR/APPELLATE AUTHORITY**

Copy to:-

1. AR(Section-II), Registrar Cooperative Societies, Parliament Street, New Delhi-110001

P.R. TRIPTAHI  
Joint Registrar  
O/o Registrar Co-operative Societies  
Govt. of N.C.T. of Delhi.  
Old Court Building, Parliament Street  
New Delhi-110001

**P.R. TRIPATHI**  
**Joint Registrar**  
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*29/11/21*