

IN THE HIGH COURT OF DELHI AT NEW DELHI

IA Nos. 9293 & 9294 of 2007 in CS(OS) 3967/1992
& IA No.6780 of 2007 in CS (OS) 2883 of 1996

SAGAR APARTMENT FLAT OWNERS SOCIETY Plaintiff
Through: Mr. J.C. Mahindroo, Advocate.

versus

SEQUOIA CONST P.LTD. Defendant
Through: Mr. Rakesh Tiku, Advocate for D-1.
Mr. Ashutosh Lohia, Additional Standing counsel
for NDMC.
Ms. Priyam Bhatnagar, Advocate for NDMC.
Mr. Atul Nanda and Ms. Rameeza Kaheem,
Advocates for Applicant in IA No. 9293/2007.
Mr. Rajesh Aggarwal, Advocate for Applicant in
IA No. 9294/2007

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

ORDER
23.07.2009

IA No. 9293 & 9294/2007 in CS(OS) 3967/1992 & IA No. 6780/2007 in CS(OS) 2883/1996

1. These applications seek the restoration of CS(OS) No.3967 of 1992 which by an order dated 9th May 2007 was dismissed as withdrawn pursuant to an application being IA No. 5397 of 2007 filed by Plaintiff No.1.

2. IA No. 9293/2009 under Order I Rule 8(4), Order XXIII Rule 1(5) and

Section 151 CPC is by seven persons viz., Mr. G.P. Barooah (resident of Flat No. 1C), Mrs. Reena Sehgal (resident of Flat 6D), Mr. Ashok Arora (resident of Flat 4C), Mr. R.K. Singal (resident of Flat 7C), Mr. B.P.S. Puri (resident of Flat 8C), Mrs. Asha Chandra (resident of Flat 9B) and Mr. K.K. Gupta (resident of Flat 10C) of Sagar Apartments, Tilak Marg, New Delhi.

It may be mentioned that IA No. 9294 of 2007 by Mr. Rajender Jaina who is owner of Flat-P, Sagar Apartments, seeks the same relief. IA No. 6780 of 2007 seeking similar relief is by the New India Assurance Company Ltd. ('NIACL') owner of Flat Nos. 12A and 13C of Sagar Apartments. By an order dated 6th March 2007 NIACL was impleaded as "Defendants" in CS(OS) No. 3967 of 1992 [earlier NIACL had filed CS (OS) No. 2883& 2884 of 1996].

3. The background to the filing of the present applications is that CS (OS) No. 3967 of 1992 was filed by Sagar Apartments Flat Owners Society (Regd.) hereafter ('Society') and 12 other Plaintiffs, each of whom was either an owner or a resident of a flat in the Society. The suit was filed against the builder M/s. Sequoia Constructions (P) Ltd. and 9 other Defendants seeking the following reliefs:

"(1) Decree for declaration that the areas and amenities listed in schedule A to the plaint in multi-storeyed building called Sagar Apartements, situate at 6, Tilak Marg, New Delhi are" Common areas and facilities" appurtenant to Apartments owners viz. Class of above-mentioned persons and by way of consequential relief to above direct/order that defendant no.1 its agents, employees or any other person in the name of said defendant, is not entitled to claim any right, title or interest therein of whatsoever nature, in any manner

detrimental to interest of above-mentioned class of persons.

(2) Decree for declaration that any transaction entered/claimed to be entered by defendant no.1 in respect to any structure/area comprised as common areas and facilities in above-mentioned building complex with any person as null and void as a consequential relief to above, to restrain defendant no.1 and all other such persons from claiming any right or interest of whatsoever nature in the above-mentioned building including the management of said building, or otherwise in any manner, through any means.

(3) Decree for declaration that defendant no.1 company by itself or through any contractor, sub-contractor, agents, employees or any person called by whatever name, has no right to make any construction or demolition of whatsoever nature, either by way of addition, alteration or modification or any other means, in building called Sagar Apartments situate at 6, Tilak Marg, New Delhi and by way of consequential relief to above, restrain above said persons from making or engaging in any constructional activity in the aforesaid building.

(4) To require defendant no.2- NDMC by issue of perpetual/mandatory injunction, to demolish all the illegal and un-authorised constructions more particularly ones described in colour red in plan annexed as Schedule-C to the plaint, in pursuance to steps already taken by said committee in respect to property called Sagar Apartments, 6 Tilak Marg, New Delhi.

(5) To require defendant no.2 by issue of perpetual/mandatory injunction, to stop misuse of electricity/connection sanctioned in the building for running of common facilities and laying up of common areas in above mentioned building.

(6) To require defendant no.3 by issue of perpetual/mandatory injunction requiring the said defendant to initiate action against defendant no.1 under the terms of perpetual lease deed executed by their office in favour of defendant no.1 in respect to land underneath above mentioned building for the non-payment of/with holding of ground rent/ lease money collected by defendant no.1 from the Apartments owners.

(7) To require defendant no.1/NDMC by issue of perpetual/mandatory injunction for initiation of action against defendant no.1 and such other person as may be found to be engaged in misuse of common areas and facilities existing in the above mentioned building.

(8) To pass preliminary decree of accounts against defendant no.1, to render account of enrichment had/received/secured by retention of amounts collected on account of ground rent/lease money, enrichment received by claiming compensation from Insurance Co., enrichment received by non-utilisation of collection made on account of fire fighting installation and enrichment received by misuse of electricity sanctioned for common areas and amenities amongst other account as forthcoming during trial of the suit and thereafter to pass final decree in terms of above.

(9) To pass such other order as the Hon'ble Court may deem just fit and appropriate in facts and circumstances briefly stated above.

(10) To award costs of the suit.”

4. Significantly in para 2 of the plaint it was stated that the suit was filed “on behalf of and for the benefit of its members as well by the apartment owners in multi-storeyed building called Sagar Apartments, 6, Tilak Marg, New Delhi, arrayed as other plaintiffs and as defendants.” The suit was for “enforcement of rights accruing to class of persons owing/occupying apartments in the said multi-storeyed building complex. Reliefs prayed in the suit are for body of persons arrayed as plaintiffs and defendants...” As already noticed, the first Defendant was the builder of Sagar Apartments, represented by its Managing Director Mr. G.Sagar Suri. The plaint was signed by each of the individual Plaintiffs.

5. After the suit was filed, it appears that an application being IA No. 12696

of 1992 was filed under Order I Rule 8 CPC. In this IA a prayer was made that permission may be granted to the Plaintiffs “to sue on behalf of the numerous persons having same and/or similar interest in the suit filed by the Plaintiffs and for the benefit of all the persons so interested.” A prayer was also made that the Court should direct notice to be given through public advertisement or by way of personal service, of the institution of the suit. This application was listed before the Court on 16th October 1992. It was directed by the Court that notice in terms of prayer (b) should be published by the Plaintiffs in two English dailies viz., the Times of India and the Hindustan Times. Notice was also directed to be pasted at the main entry points to the building.

6. Thereafter individual applications were filed by various apartment owners/space owners seeking impleadment in the suit. A sampling of these applications are IA Nos. 13198, 13384, 13385, 13386 etc. of 1992. Each of these applications came to be allowed. With the allowing of the aforementioned applications, apart from Plaintiff No.1 which is the Society, there were several other co-Plaintiffs, in addition to the 13 Plaintiffs who originally filed the suit, as well as co-Defendants who were impleaded as parties in their capacities as flat owners or space owners or residents of Sagar Apartments.

7. Apart from CS (OS) No. 3967 of 1992 there were several independent suits filed by flat owners seeking similar reliefs. These were **CS (OS)**

Nos.4168/1992, 4247/1992, 4248/1992, 4249/1992, 4282/1992, 4287/1992, 4327/1992, 4332/1992, 4333/1992, 4383/1992, 4531/1992, 2883/1996 and 2884/1996. These suits were also directed to be heard along with CS (OS) No. 3967 of 1992.

8. The issues that arose in these cases was whether the common areas in Sagar Apartments could be controlled, built upon, leased out or sold by Defendant No.1, and whether the moneys paid towards maintenance etc. by the individual flat owners were being appropriately accounted for and used for the purposes of the individual flat owners/apartment owners. It may be mentioned here that IA Nos. 839 and 8078 of 1995 were filed by the Plaintiff No.1 Society under Order XXXIX Rules 1 & 2 CPC seeking the relief of restraining Defendant No.1 and its group companies including Defendants 4 and 5 from using the wooden structures erected on the ground floor and seeking a direction to NDMC, Defendant No.2 to demolish/remove the structures as detailed in the application to the annexure etc. The other prayers were for a direction to restrain Defendant No.1 from making additions/alterations, construction of whatever nature, in the stilt area of the Sagar Apartments and a direction to Defendant No.1 to restore the common areas to its original condition by removing constructions/additions/alterations. Interestingly, IA No. 839 of 1995 was supported by an affidavit of Mr.G.P. Barooah (who is Applicant No.1 in the present application) in which he stated that he was a member of the Plaintiff Society, the affidavits in support of IA No. 8078 of 1995 were by Shri G.P.

Barooah and Mr. K.K. Gupta (Applicant No.7) who stated in the affidavit that he was the owner/occupier of the Flat No.10C Sagar Apartments.

9. On 4th January 2002 this Court was dealing with IA No.12019 of 2001 filed by the Society in which it was alleged that the Sagar Apartments Flat Owners Association (hereafter 'Association') had been formed with Shri G.Sagar Suri as its President and that the Association had been collecting moneys from individual flat owners towards maintenance and other charges and not depositing the dues owing to the NDMC by the individual flat owners. This Court in its order dated 4th January 2002 recorded that there was no objection on the part of Defendant No.1 or any of the other parties to the appointment of a Receiver to collect the maintenance and the dues payable to the NDMC and for payment of salaries to the staff. Accordingly, Mr. R.S. Chhabra, Advocate was appointed as a Receiver and his honorarium was also fixed. It may be mentioned here that throughout the time the suit was pending, the Association did not file any application in the suit asking to be impleaded as a party. As long as the suit was pending this position continued.

10. On 6th March 2007 the following order was passed by this Court in the connected suits:

**“CS (OS) Nos.4168/1992; 4247/1992; 4248/1992;
4249/1992; 4282/1992; 4287/1992; 4327/1992;
4332/1992; 4333/1992; 4383/1992; 4531/1992;
2883/1996 and 2884/1996”**

These suits are being listed along with CS(OS)

3967/1992. In some of the suits, the plaintiff has even passed away without any steps being taken to implead the legal heirs.

The controversy really arises in CS(OS) 3967/1992 where there is a conflict between the builder of the property M/s Sequoia Constructions Private Limited and the occupants/owners of the flats. The primary grievance is about the management of the common areas and the formation of a society for the said purpose.

In view of the aforesaid, it is agreed that the only direction to be passed in these suits is that if there is any occupant who wants to individually claim his rights in respect of the controversy in question, such a person can move an appropriate application in CS (OS) 3967/1992.

The suits stand disposed of.”

11. On the same day this Court passed orders disposing of several applications in CS (OS) No. 3967 of 1992. For instance , IA No. 1837 of 2003 U/O I Rule 10 was allowed permitting one of the occupants to be impleaded. As far as the suit itself is concerned, the following order was passed:

“CS(OS) 3967/1992

The New India Assurance Company Limited, which had filed CS(OS) Nos.2883/1996 and 2884/1996, which suits have been disposed of today, makes an oral prayer for impleadment as defendants.

The prayer is not opposed and is allowed. Amended memo of parties be filed within a week.

Parties to file their list of witnesses within four weeks. Plaintiffs to file the affidavits by way of evidence within eight weeks. The Joint Registrar is appointed as the local commissioner to record evidence. On completion of evidence of the plaintiffs, the defendants are permitted to file their affidavits and examination-in-chief.

On completion of trial, list before the Court.

List before the Joint Registrar on 25.5.2007 for

admission/denial of documents and for directions regarding trial.”

12. IA No. 5397 of 2007 under Section 151 CPC was filed purportedly on behalf of the Society on 8th May 2007. It is a very short application and reads as follows:

“1. That the plaintiffs/Applicants filed this suit in this Hon’ble Court in 1992.

2. That the plaintiff society in its resolution has unanimously resolved not to pursue this suit in this Hon’ble Court and withdraw the same.

3. That a resolution passed by the plaintiff society is annexed as ANNEXURE-Z with this application.

In the facts and circumstances and the unanimous decision arrived at by the plaintiff society, this Hon’ble Court is requested to permit the plaintiff society/Applicants to withdraw the suit with liberty to file afresh, if need so arises, for raising any issue in future.

It is, therefore, prayed that this suit may kindly be allowed to be withdrawn, with liberty to file afresh if need so arises.”

13. The above application was filed by Shri. J.C. Mahindroo as counsel for the Plaintiff. Till that time the Society was being represented by Shri H.L. Tiku, and after his designation as Senior Advocate, by his other associate lawyers including Mr. Ankur Mittal and Mr. Pankaj Gupta. The application was signed by the President and the Secretary of the Sagar Apartments Flat Owners Society (Regd.), Shri K.B. Kapur (owner of Flat No. B-5), Shri Ravinder Kumar (owner of Flat No.B-24), Mr. Santosh Pathak (owner of Shop-D), Mr. Alkesh Takkar, Shri Anand Aggarwal (owner of Flat No. B-

21) and two other persons whose names are not decipherable but shown as owners/occupants of Flats 10 (II) and 9 (II). The application was supported by the affidavits of Shri Aloke Periwal, President of Society and Shri Vijay Vashishtha, Secretary of the Society. Shri Vijay Vashishtha also filed an affidavit dated 8th May 2007 in the following terms:

“I Vijay Vashishtha s/o Late R.P. Sharma r/o B-16, Sagar Apartments, 6, Tilak Marg, New Delhi-110001 do hereby solemnly affirm, declare and state on oath as under:-

1. That this suit was filed by the plaintiff Society and 12 other plaintiffs.

2. That the Society is plaintiff No. 1 on whose behalf President and I as Secretary have already signed for withdrawing this suit. Plaintiff No. 2 was Mrs. P. Baruah who expired many years ago. Plaintiff No. 3 was Mr. G.C. Jain who also left the flat and went of. Plaintiff No. 4 Mr. R.S. Gai has sold his flat and the said flat stands transferred from his name. Plaintiff No. 5 Mr. R. Kakkar, plaintiff No. 6 Mr. K.B. Kapoor, plaintiff No. 7 Mr. Rajinder Kumar have signed the accompanying application seeking to withdraw this suit. Plaintiff No. 8 Shashi Seth has also sold the flat. Plaintiff No. 9 Alkesh Takkar has also signed the accompanying application seeking to withdraw the suit. Plaintiff No. 10 Mr. Y.K. Gupta was a tenant only and has left the flat. Plaintiff No. 11 Sarabjit has sold the flat, Plaintiff No. 12 Mr. Rajeev Kapoor sold the flat. Plaintiff No. 13 has also sold the flat and left. Thus there are no interested parties left as plaintiffs to continue this suit and, therefore, all those plaintiffs who are either alive or are representing through the society are withdrawing this suit and have signed this common/joint application seeking to withdraw the case with liberty to file afresh if need so arises in future.”

14. Annexed to the application was a resolution of the Society which reads as under:

“The executive Committee of the Sagar Apartments Flat

Owners Society (Regd.) held its meeting on 30.4.2007 and unanimously took the following decision:

1. to withdraw the Civil Suit No. 3967 of 1992 filed in the Delhi High Court and for that purpose resolved to appoint any Advocate(s) for the said purpose and move an appropriate application before the High Court of Delhi in the said case.

2. President, Secretary shall engage those Advocates whom they deem it appropriate and President shall be free to negotiate, make payment of fee to him/them on behalf of the Society.”

15. This application was listed before this Court on 9th May 2007 when the following order was passed:

IA No.5397/2007

The application has been filed by the plaintiff seeking to withdraw the suit. There is no objection to the withdrawal of the suit.

The application is allowed.

CS (OS) No.3967/1992

In view of the prayer made in IA No.5397/2007, the suit is dismissed as withdrawn leaving the parties to bear their own costs.

The case need not be listed on 25.5.2007 before the Joint Registrar.

Interim orders stand vacated.”

16. The present application was filed on 7th August 2007 by the aforementioned seven applicants who contended that a fraud had been played on this Court inasmuch as none of the applicants, who were apartment/flat owners were ever informed of the suit being withdrawn. The suit was in a representative capacity and the applicants were under the impression that the suit which was pending is being pursued. Evidence was

to be led and the suit was ripe for trial. It is stated that sometime in July 2007 some of the residents noticed that the building maintenance bill dated 5th July 2007 for the period 1st July 2007 to 30th September 2007 was not signed/authenticated by the Court Receiver who was in charge under the interim orders passed by this Court. Thereafter they made enquiries and came to realise that a fraud had been played on the Court and unknown to them and other residents, the aforementioned application and affidavits had been filed before this Court seeking withdrawal of CS (OS) No. 3967 of 1992. The applicants also challenged the resolution purported to have been passed by the Executive Committee of the Society. They questioned the election of the two signatories to the application on behalf of the Society. Inter alia it was submitted that when the suit was filed in a representative capacity, there was no question of the suit being sought to be withdrawn only by the applicants in IA No. 5397 of 2007 who in any way did not represent all the parties to the suit. Furthermore the suit could not have been withdrawn in the absence of notice being issued to the other parties in the said suit in terms of order 1 Rule 8 (4) CPC.

17. This Court directed notice to issue in the application on 17th August 2007. A reply was filed to the present application by the applicants who had filed IA No.5397 of 2007 represented by Shri J.C. Mahindroo, Advocate.

Inter alia in para 12 of the said reply it was contended as under:

“It is further humbly submitted that it is most pertinent to mention here that all the flat owners/space owners do not automatically become members of the Sagar Apartments Flat Owners Society only by virtue of their being such

owners of flats/spaces in Sagar Apartments. Admitted position is that the basic organization/association looking after the overall building management and maintenance is Sagar Apartments Flat Owners Association and not the Sagar Apartments Flat Owners Society. The Sagar Apartments Flat Owners Society was constituted by very few persons/residents of Sagar Apartments Flat Owners and majority of the flat owners/space owners were not the members of the Sagar Apartments Flat Owners Society and abstained from becoming members of the Society. On the contrary, each and every flat owners/space owners in the entire Sagar Apartments i.e. Tower Block as well as Front Block is a member of Sagar Apartments Flat Owners Association and each and every flat owners/space owners pays monthly maintenance charges to the Sagar Apartments Flat Owners Association from which account salary to maintenance staff is given and all maintenance is undertaken and all Electricity and Water bills are paid. Therefore, the applicants are illegally attempting to paint a picture in the judicial mind of this Hon'ble Court as if Sagar Apartments Flat Owners Society is the sole body to look after and take care of the welfare and affairs of the Sagar Apartments as a whole. On the contrary, the truth and factual position is that Sagar Apartments Flat Owners Society has absolutely no role to play of any kind whatsoever in the building management and maintenance and/or affairs of the Sagar Apartments. It is precisely because of these reasons the present seven applicants who are although residents of Sagar Apartments are not and have chosen not to be members of Sagar Apartments Flat Owners Society. These all seven applicants are paying monthly maintenance charges to Sagar Apartments Flat Owners Association since the day they became residents/owners of flats. Therefore, the number of residents who are members of the Sagar Apartments Flat Owners Society is very small and the applicants have chosen to remain away from the said Sagar Apartments Flat Owners Society by not becoming members and by not paying mandatory membership fee. Therefore, the applicants are not entitled to claim as a matter of right to be represented through the Sagar Apartments Flat Owners Society merely because they are the residents/owners of flats in Sagar Apartments. Hence, the allegation of the applicants that Mr. Alok Periwal is not the President nor Mr. Vijay Vashistha Secretary of Sagar Apartments Flat Owners Society is wrong and specifically denied. It is further

wrong and specifically denied that the said President and Secretary have falsely and fraudulently filed affidavits before this Hon'ble Court as office bearers. It is further humbly submitted that petitioners being not the members of the Society are in no way authorized to challenge the validity and legality of the election to the posts of President and Secretary of Sagar Apartments Flat Owners Society. Hence, they have no locus standi to challenge the legality and validity of the elections of Mr. Alok Periwal and Mr. Vijay Vashistha as President and Secretary of Sagar Apartments Flat Owners Society in this suit by way of the present application. It is thus wrong and specifically denied that the application for withdrawal was one made by selected few occupants of Sagar Apartments fraudulently and in collusion with the defendant No. 1 builder.”

18. In short the stand of the applicants who had filed IA No. 5397 of 2007 was that the Society did not represent all the flat owners and it was only the Association which represented all the flat owners. The stand is therefore that it is the Association which can be said to properly represent all the flat owners. It was contended that the individual applicants who had filed the present application i.e. IA No. 9293 of 2007 had themselves been paying moneys to the association towards maintenance and other due. In any event they were not members of the Society. It was further contended that Mr. Alok Periwal and Mr. Vijay Vashishtha had been validly elected as President and Secretary of the Society and that applicants had no locus to challenge the validity of their election. It is contended that since the two had filed affidavits before this Court stating that they were President and Secretary “as such there is no need for them to prove themselves as office bearers of this Society in this restoration application.” It was asserted that the decision to withdraw the suit was a unanimous decision of all the office

bearers of the Society which resolution was passed in accordance with the procedure prescribed.

19. The submissions of Mr. Atul Nanda for the applicants, Mr. Rakesh Tiku for Defendant No.1, Mr. J.C. Mahindroo for Plaintiff No.1 Society and other counsel had been heard.

20. In the first place it requires to be noticed that there were parties to the suit other than the 13 original Plaintiffs. Apart from the original Plaintiffs 2 to 13 being individual flat owners, there were many other individual flat owners whose applications under Order I Rule 10 CPC had been allowed by this Court and were made parties to the suit. Clearly these parties, whose interests would be affected, were neither consulted nor their signatures taken in the application filed for withdrawal of the suit. Significantly, even in the reply filed to the present application, this position is not disputed. It is only stated that a resolution was passed by the Executive Committee of the Society. A perusal of the said resolution shows that there was no earlier or later meeting as such of the Members of the Society. No resolution was passed at any meeting of all the members of the Society. The resolution passed by the Executive Committee does not indicate that the individual flat owners or occupants were consulted. Therefore, the Executive Committee of the Society, could not have passed a resolution authorizing withdrawal of the suit without consulting all the Members of the Society and in particularly those who were parties to the suit.

21. Importantly, the application seeking withdrawal of the suit, was not signed by all the parties to the suit whose interests were no different from that of the Plaintiffs. Therefore the suit on behalf of such parties certainly could not have been withdrawn. Unfortunately, these facts were not pointed out in IA No.5397 of 2007. The affidavit dated 8th May 2007 of Mr. Vashisht, extracted above, only talks of the original Plaintiffs 2 to 13 and conveniently forgets to mention that there are other parties to the suit. The statement therein that there are no other interested parties left as Plaintiffs to continue the suit and therefore all the Plaintiffs who are alive are withdrawing the suit is clearly incorrect and in the teeth of the several orders passed by this Court in individual applications filed under Order I Rule 8 CPC permitting those applicants to become parties in the suit. It may be noticed that when some of these applications were allowed, the applicants were impleaded either as co-plaintiffs or co-defendants although their interests were no different from that of the individual Plaintiffs in the suit.

22. This Court does not therefore consider it necessary to examine the other contentions raised about the validity of the resolution passed by the Society and the validity of the elections of Mr. Vijay Vashishtha and Mr. Perival as Secretary and President respectively of the Society. The above facts make it abundantly clear to this Court that IA No. 5397 of 2007 in the form in which it was filed could not have been allowed by this Court and certainly the entire suit could not have been allowed to be withdrawn.

23. It is contended by Mr. Mahindroo, learned counsel appearing for some of the Plaintiffs and by Mr. Rakesh Tiku, learned counsel appearing for Defendant No.1 that even if the suit is restored it should only be vis-a-vis the other parties and not vis-à-vis those who were applicants in IA No. 5397 of 2007. This Court is unable to accept the submission. When the order dated 9th May 2007 was passed by this Court the distinction between the applicants in IA No. 5397 of 2007 and other flat owners whose interests were no different from the Plaintiffs and whose interests were being adversely affected was not brought to the notice of the Court. The repercussions of the withdrawal of the suit on other flat owners were perhaps not anticipated. It is plain that the Executive Committee of the Society which purportedly passed a resolution permitting withdrawal of suit, did not consult the other parties to the suit. This Court also finds that no statement was recorded of any of the individual applicants who must have co-signed the application seeking withdrawal. It is not even clear that whether they were conscious of the repercussions of IA No. 5397 of 2007 being allowed and the suit being withdrawn.

24. In the considered view of this Court, therefore, the order dated 9th May 2007 could not have been passed and it is hereby recalled. IA Nos. 9293, 9294 and 6780 of 2007 will stand allowed. As a consequence, IA No. 5397 of 2007 will stand dismissed. CS (OS) No. 3967 of 1992 stands revived.

25. Mr. Tiku, raised a point about the status of the interim orders that would revive once the suit is restored. According to him even if the suit were to be restored, all the interim orders that were in force as on 9th May 2007 need not get automatically revived. According to him, after the passing of the order dated 9th May 2007 the Court Receiver was no longer in place and therefore the status quo which obtained subsequent to the passing of the order dated 9th May 2007 should be permitted to continue. This Court finds this submission unacceptable. When the suit is revived with the recall of the order dated 9th May 2007, all interim orders that were in force on that day would automatically stand revived. If any of the parties to the suit desire to seek variation of any of the orders which get revived, it would be open to such parties to seek appropriate remedies in law.

26. It may be noticed that submissions were sought to be made on behalf of the Association. However, the Association is not even a party in the present suit. At no point in time has the Association filed any application seeking any direction from this Court much less a direction to implead itself. If indeed it is the Association which is, as claimed, representing the interests of the individual members it is surprising that it has never sought to be made a party to the present proceedings. Be that as it may, this order does not preclude any of the affected parties to the suit from filing applications to seek directions in accordance with law. The order dated 6th March 2007 in the other suits which had been disposed of is not being disturbed by this order. If any of the individual Plaintiffs in those suits seek to be impleaded

in the present suit in terms of that order, it would still be open to them to file applications for that purpose.

27. IA Nos. 9293, 9294 and 6780 of 2007 are allowed. IA No. 5397 of 2007 is dismissed. CS (OS) 3967 of 1992 stands revived.

CS (OS) No. 3967 of 1992

28. The suit will now be listed before the Joint Registrar for admission/denial of documents on 11th September 2009.

29. The order be communicated forthwith to Court Receiver Mr. R.S. Chhabra who is requested to resume his responsibilities as Receiver forthwith.

S. MURALIDHAR, J

JULY 23, 2009
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