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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 137/2018, IA No.4435/2018 (u/O XXXIX R-1&2 & O-XXXVIII R-5 CPC), IA No.4442/2018 (for condonation of delay in re-filing the petition), IA No.12618/2018 (u/S 8 r/w S-5 Arbitration & Conciliation Act, 1996), IA No.12693/2018 (u/O I R-10(2) CPC), IA No.613/2019 (u/S 149 r/w 151 CPC), IA no.817/2019 (u/O I R-10(2) CPC), IA No.13784/2019 (u/O I R-10(2) r/w O I R-8(3) & R-8A CPC) & IA No.13785/2019 (for condonation of 72 days delay in filing IA No.13784/2019)
SUNITA KUMARI & ORS Plaintiffs

Through: Mr. Nikhil Borwankar, Mr. David Vijay Thomas, Mr. Aksaay Nain & Ms. Shimona Ghosh, Advs.

Versus

SWO- INDIA LTD. & ORS Defendants

Through: Mr. Satyavan Kudalwal, Adv. for D-1,3,5,6&7.

Mr. Rakesh Dahiya & Mr. Jayesh Agrawal, Advs. for R-4,8&9.

Mr. Rohit Bhasin, Adv. for D-12&13.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **30.09.2019**

1. The 39 plaintiffs, all from defence forces, have instituted this suit against 13 defendants, as a representative suit, seeking (i) rendition of accounts in respect of amounts received by the defendants from plaintiffs and other purchasers and for a consequent decree for recovery of the amounts so found due, along with damages; (ii) permanent injunction restraining the defendants from alienating, encumbering or otherwise parting with their assets including the assets created with the monies received from



the plaintiffs; (iii) appointment of an Expert Committee to look into and consider the claims of the plaintiffs and other purchasers; and, (iv) permanent injunction restraining the defendants from changing the position of their shareholdings in the defendants No.1&2 and / or from operating the accounts of the defendants No.1&2 etc.

2. The suit came up first before this Court on 6th April, 2018, when without considering the maintainability of the suit as a representative suit, as it is purported to be filed, the same was entertained and vide *ex parte* order the defendants restrained from advertising or accepting any new applications under the subject scheme or project as pleaded by the plaintiffs.

3. The suit is still pending at the stage of service of summons on some of the defendants.

4. Only the counsel for defendants no.1,3,5,6 and 7, the counsel for defendants no.4, 8 and 9 and the counsel for defendants no.12 and 13 appear.

5. The plaintiffs, when the suit had come up first before this Court, had sought extension of time for payment of court fees.

6. The counsel for the plaintiffs today states that all the plaintiffs have paid court fees of their share and only the court fees of the share of plaintiff no.4 Rajesh Kumar and plaintiff no.35 Dhanesh Kumar remains to be paid.

7. It is *inter alia* the case of the plaintiffs that the defendant no.1, by public advertisements had advertised six housing projects titled “Special Benefit Scheme” for servicemen / ex-servicemen and invited applications



therefor and the 39 plaintiffs had individually applied under the said Scheme and paid varying amounts, all to the defendant no.1, totalling Rs.3,83,16,417.58 paise.

8. I have enquired from the counsel for the plaintiffs, how each of the plaintiffs had paid the monies claimed to be paid by them to the defendant no.1.

9. The counsel for the plaintiffs states that all had paid by banking channels.

10. I have enquired from the counsel for the defendant no.1, whether the defendant no.1 admits receipt of the said amount.

11. The counsel for the defendant no.1 states that whatsoever amount it is, the same is not disputed. He however states that some persons have been refunded the monies and he needs to take latest instructions.

12. It appears that once each of the plaintiffs paid the monies through banking channels to the defendant no.1, there is no need for a decree for rendition of accounts as has been sought, and the plaintiffs if desirous of refund of the monies paid by them to the defendant no.1 and against which they have not received any house, should have simply sue for recovery of the said amount.

13. The suit appears to have been filed without checking up whether a representative suit in such a situation would lie or not, leading to the plaintiffs, who are already suffering at the hands of the defendant no.1, continuing to suffer now, even after taking legal recourse.



14. To my mind the suit is a non-starter and if allowed to proceed, would only remain pending without anything effective being done, as has been the case for the last one and a half years since when the suit is pending.

15. It is deemed appropriate that the Director/Directors of the defendant no.1, in the know of the facts appears before this Court along with the Statement of Account as on today of the amounts received from each of the plaintiffs and the amounts if any refunded to any of the plaintiffs.

16. If the Director / Directors of the defendant no.1 appears does not know the facts, the entire Board of Directors of the defendant no.1 to appear.

17. List on 16th October, 2019.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 30, 2019

‘gsr’..