

(2014) 12 CAL CK 0099

Calcutta High Court

Case No: G.A. 2927 of 2013 and W.P. No. 813 of 2013

Chatter Singh Baid

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Dec. 24, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 226
- West Bengal Co-operative Societies Act, 1983 - Section 50, 77, 77(2), 93, 95

Hon'ble Judges: Soumen Sen, J**Bench:** Single Bench

Advocate: Surojit Nath Mitra, Sr. Advocate and Atish Ghosh, Advocate for the Appellant;
Ranjan Bachwat, Sr. Adv., Saikat Roy Chowdhury and S.M. Saha, Advocate for the Respondent

Judgement

Soumen Sen, J.

This writ application is preferred against the judgment of the Ld. Tribunal dated 14th June, 2013 in Appeal no. 13/11. The Appellate Tribunal by the said judgment and order upheld the award dated 4th February, 2011 passed by the Ld. Arbitrator in dispute case no. 19/RC/S/2010.

2. The writ petition no. 1 is claiming to be the Chairman of the Woodburn Park Co-operative Housing Society Limited.

3. One East End Apartment Co-operative Housing Society Limited (hereinafter referred to as the "parent society") was the owner of two plots of land (a) 11/1B, Ekdalia Place, Kolkata - 700 019 and (b) 5B, Woodburn Park, Kolkata 700 020. Initially the respondent nos. 3, 4 and one Dwarkadas Kothari, the predecessor in interest of the respondent no. 5 and 6 (hereinafter referred as private respondent) were members of the parent society. Owing to dispute and differences between the members of the parent society, which includes private respondents or their predecessor, the respondent nos. 3, 4 and the said Dwarkadas Kothari on 26th

August, 1977 tendered their resignation to the parent society. Such resignation was accepted and communicated to the said private respondent vide letters dated 12th January, 1979 by the private respondent no. 2.

4. Subsequently by three separate letters all dated 7th February, 1979, the respondents disputed the decision of the parent society to terminate their membership. By the said letters the private respondents and/or their predecessor in interest had unequivocally acknowledged that they had knowledge the decision of parent society for terminating their membership. Thus the cause of action of the respondents to challenge the order and/or decision of termination of their memberships arose in the year 1977.

5. Another dispute between the members of the parent society was brought to this Hon'ble Court by some of its members by filing a writ petition being Matter no. 205 of 1975. By an order dated 15th December, 1978 the Division Bench of this Hon'ble Court directed for division of the parent society. Pursuant to such direction of this Hon'ble Court, a preliminary order of division was passed by the Deputy Registrar on 5th September, 1979 under Section 77(1) of the West Bengal Cooperative Societies Act, 1973 dividing the parent society into two i.e. (i) Ekdalia Cooperative Housing Society Limited and (ii) Woodburn Park Co-operative Housing Society Limited, being the petitioner no. 2 herein.

6. In the preliminary order of division, gazetted on 15th November, 1979, invited objections under Sec. 77(2) of the West Bengal Cooperative Societies Act, 1973 from existing members of the society and creditors of the society in respect of the order of division only. No objection was filed by any of the said private respondents before the Deputy Registrar objecting to the preliminary order of division. In the preliminary order of division, the respondent nos. 3, 4 and Dwarkadas Kothari's names along with others were appearing as non-members and creditors of the society.

7. On 15th January, 1980 the said private respondents and/or their predecessor in interest made three representations all dated January 14, 1980 before the Registrar of societies.

8. By order dated 23rd June, 1980 the Deputy Registrar of Cooperative Societies in exercise of its powers under Section 77(3) of the West Bengal Cooperative Societies Act, 1973 finally divided the said parent society into two societies in the manner as stated therein. The respondents' name along with others appeared in the list of non-members in the said final order.

9. The non-inclusion of the name of the private respondent as members has led to the filing of an arbitration case having genesis to the letters of resignation alleged to have been submitted by the respondent nos. 3 to 6 as members of the parent society.

10. One of the issues raised by the society before the learned Arbitrator was the dispute raised by the respondent nos. 3 to 6 with the Learned Arbitrator under Section 95 of the West Bengal Co-operative Societies Act, 1983 was barred by limitation.

11. While the contention of the respondent nos. 3 to 6 had been although that they had never submitted any letter of resignation, the same, however, had been and has been disputed by the writ petitioners. In the said dispute case the society stated that the said respondent after obtaining membership of the parent society by payment of Rs. 100 each towards membership fees in or about paid a further sum of Rs. 30,000/- each in advance towards the purchase of the land and for construction of the projects of the parent society. On 12th January 1979 the parent society alleged that the respondents had resigned from the membership and sent cheques of Rs. 100 each as refund of share money. However, the advance payment of Rs. 30,000/- was never returned. In the meantime, the writ petition was filed in Court being W.P. no. 205/95 regarding the administration of the parent society. The matter ultimately reached the Appellate Court. The Appellate Court by an order dated 15th December, 1978 directed Registrar of Cooperative Societies to take steps for administration of the assets and liabilities of the parent society.

12. The private respondents however, stated that they did not submit any letter of resignation and returned cheques to the parent society along with three separate letters all dated 7th February, 1979 raising objections against such illegal act of the parent society. The parent society accepted such objection and did not proceed any further. The cheques were never forwarded thereafter by the parent society.

13. Thereafter the parent society was divided into two societies namely, Ekdalia Cooperative Housing Society Limited and Woodburn Park Housing Society Limited by virtue of preliminary order of 527/CMAH dated 5th September, 1979 and final order dated 23rd June, 1980.

14. The preliminary order of the division of the parent society into two societies transferring the membership of the private respondents to Woodburn Park with their names appearing in a list of 30 members and non-members was objected to by the private respondents. The private respondents contended that no hearing was given prior to such action nor any reason was given thereof. The preliminary order was published in the gazette on 15th November, 1979. The private respondents immediately objected to exclusion of the names as published in the notification.

15. On 23rd June, 1980 the final order of division was passed by the then Deputy Registrar of the Director of the Co-operatives. The membership of the respondents were transferred to Woodburn Park. The names of the respondents were included in a list of non-members without giving any reason. Clause 3 of the said order dated 23rd June, 1980 issued by the Deputy Registrar of the co-operatives, inter alia, stated that the eligibility of the membership of the person who are now shown as

members and non-members of the new society are to be scrutinized by the respective new societies when registered. Keeping in view the provisions of the West Bengal Co-operative Societies Act, 1973 and the rules framed thereunder and finalize the strength of the membership of the respective societies with the approval of the Registering Authority. Being aggrieved by the said order 13 out of the 38 members preferred a Civil Revision bring C.R. No. 3922(W) of 1981.

16. The learned single Judge quashed the final order purported to have been passed under Section 77 of the said Act dated 23rd June, 1980. It was held that the said order was illegal, void and without jurisdiction so far as the Woodburn Park Co-operative Housing Society Ltd. is concerned and so far as the modification contained in Clause 3 is concerned. It was held that the said matter could not be left to the new society but it should have been decided by the Deputy Registrar himself before passing such order. It was further held that the order itself would show that no final decision was taken regarding the membership of the Woodburn Park Co-operative Housing Society Ltd. and that the statements to contrary in the affidavit affirmed on behalf of the department were not correct. It was further held that such decision was rendered without giving any opportunity to the persons who have filed their objections. Accordingly, a writ of mandamus was issued directing the competent officer concerned to decide the question as to who are to be treated as members of the Woodburn Park Co-operative Housing Society Limited. An appeal against the said judgment dated 2nd August, 2002 was also dismissed the Hon'ble Division Bench, inter alia, by observing that it is a duty of the Registrar to decide the question of membership in terms of Section 77 sub-sections 1,2 and 3 of the said Act. It was held that the Registrar completely lost sight of the objections filed by some persons did not decide the issue of membership, this approach of the authority cannot be countenanced. It is a duty of the Registrar under sub-section 3 of Section 77 of the said Act to decide the question of membership along with the question of division of assets and liabilities. The Registrar was directed to hear the preliminary objections filed by the writ petitioners in accordance with law that who are members and who are not. After disposal of the question of membership by the Registrar, the Managing Committee was to be formed in accordance with law. Against the said judgment of the Hon'ble Division Bench, a special writ petition was preferred by the Woodburn Park Co-operative Housing Society Ltd. The Hon'ble Supreme Court set aside the order passed by the High Court and directed the Registrar to consider the objections afresh within a period of six months would be restricted to decide the question whether there was any resignation or whether letter of resignation was signed by the objectors or whether the resignation was approved by any resolution and on the question of refund of share money and the effect of refund and acceptance. The Registrar was directed to consider the other materials that may be relevant so far as resignation is concerned.

17. In the said proceeding, the claimants were the proforma respondents. The claimants did not file any affidavit at any stage of the proceedings. Thereafter

subsequent thereto, the private respondents filed an interlocutory application being LA. No. 6 in Civil Appeal No. 2638 of 2005 praying, inter alia, for a declaration that the said petitioners should be treated at par with 13 persons. In paragraph 5 of the judgment of the Hon"ble Supreme Court dated 2nd April, 2008 states:-

"5. There are certain factual aspects involved here. In the writ petition there was no mention about the alleged resignations. The letters of resignation dated 20.08.1976 are on record. There is also no denial of the writing or signatures. Out of 38 who are claimed to have resigned 13 persons filed objection, while rest did not. In the background of the factual position it would be appropriate to set aside the High Court"s orders. Let the matter be considered by the Registrar afresh within a period of 6 months. The enquiry will be restricted to decide the question whether there was any resignation and whether letter of resignation was signed by the objectors and whether the resignation was approved by any resolution and on the question of refund of share money and the effect of refund and acceptance. The Registrar shall also consider the other materials which have relevance so far as resignation is considered. It would be open to the Registrar to call for the records and the documents from the parties within a period of 6 months. There would be no allotment to 13 persons who raised objections until decision is taken by the Registrar."

18. In the said application, it was contended by the respondents herein that the applicants are at par with 13 persons who had purportedly resigned but had filed objections/protests before the appropriate authority. They were part of 38 members who were excluded as members of the Eastend Apartment Co-operative Housing Society Limited. They had filed first objections on 7th February, 1979 regarding the resignation from members of society and thereafter again on 14th January, 1980 regarding objections to Section 77(2) of the West Bengal Co-operative Society Act. Their names appeared in the notification dated 15th November, 1979 at Serial No. 24, 25 and 36. The applicant at Serial No. 36 died during the pendency of the Special Leave Petition and, therefore, their legal heirs who were brought on record are filing the said application. The said applicants reminded the authority by letter dated 30th September, 2008 to decide the objections before the Registrar, Cooperative Societies filed on 14th January, 1980. The authorities, however, on 25th September, 2008 refused to hear the said applicants on the ground that the order of the Hon"ble Supreme Court will not apply qua the applicants herein. By a subsequent communication dated 5th March, 2009, the Registrar, Co-operative Society passed a cryptic order stating that the said society does not exist. The said interlocutory application was, however, dismissed on 9th November, 2009.

19. It is stated in the said petition that the cause of action in issue started on and from 12th January, 1977, 14th January, 1980, 2nd April, 2008, 30th September, 2008, 31st March, 2009 and 1st September, 2010 and continuing day by day till date. The grievance against the Registrar appears to be that the Registrar in terms of the

order of the Hon"ble Supreme Court re-hear the matter without providing any opportunity to the plaintiffs-claimants to represent their grievance according to the directions of the Hon"ble Supreme Court and dispose of the matter filed on 31st March, 2009.

20. During the pendency of the aforesaid proceeding and in the meantime, in June 1981 the petitioner no. 1 re-commenced the work of construction of the multi-storied building at no. 5B Woodburn Park, Kolkata - 700 020. After obtaining the renewal of the sanctioned plan, the petitioner no. 1 completed the work of construction of superstructure and the necessary civil works of the said multi-storied building consisting of basement, ground floor and eight upper floors, by 1985-86.

21. On the basis of the order dated 2nd April, 2008 passed by the Hon"ble Supreme Court as aforesaid, the Registrar of Cooperative Societies conducted an enquiry and thereafter, on 30th March, 2009 had passed an order holding that 12 out of the said 13 persons who were the writ petitioners in C.R. No. 3922(W) of 1981, were the members of petitioner no. 1. The case of the other writ petitioner who had died in the meantime, was not considered by the Registrar as the widow of the said writ petitioner expressed her disinclination to be the member of petitioner no. 1.

22. The private respondents by a notice dated 1st September, 2010 claimed that they were the members of the petitioner no. 1 and accordingly asked for their respective allotments of flats in the Woodburn Park. The respondents claimed that in respect of such notice demanding justice the allotment of their respective shares in the property, the writ petitioners had refused to allot the flats constructed at the Woodburn Park. Thereafter the private respondents filed a plaint on September, 2010 under Section 95 of the 93 Act.

23. In the said proceeding the writ petitioners filed the written statement. Before the arbitrator, the writ petitioners filed two objections. The first objection was with regard to the maintainability of the dispute on the ground of limitation. It is stated in Paragraph 6 of the said preliminary objection that the grievance of the petitioners, if at all, arose on 7th February, 1970 and as such the cause of action of the plaintiffs had arisen some 31 years and as such the instant dispute is beyond the jurisdiction of the learned arbitrator since orders and actions of the Registrar of Co-operative Societies cannot be adjudicated under Section 95 of the West Bengal Co-operative Societies Act, 1983. The plaintiffs did not approach the arbitrator with clean hands before the learned arbitrator and they have suppressed the dismissal of IA No. 6 of 2009 in Civil Appeal No. 2638 of 2005 in view of such dismissal this reference is not maintainable. It was stated that the principle of res judicata would apply against the claimants. In the substantive objection it is stated that the Society cannot allot the respective flats unless such approaches were made on the basis of appropriate judicial pronouncements validating the membership of the claimants. It was further stated that writ petitions were pending before the High Court where

there are restrained orders of the Hon"ble Court of the defendant Society regarding the allotment of flats. It was reiterated in the said objections that apart from filing objections dated 14th January, 1980, the claimants did not take any steps to redress their alleged grievance.

24. In the dispute proceeding the private respondents inter alia prayed for following reliefs:

(a) to declare the plaintiffs as the bona fide members of the concerned society along with the rights and amenities attached thereto as per statute, and

(b) to declare the acts and conducts of the concerned society towards the plaintiffs till date are totally illegal and got no force, and

(c) to direct the authorities of the concerned society to allot the flat to each of the plaintiffs with immediate effect and restrain the society not to act further illegally in respect of allotment of flats in any manner whatsoever.

25. The Ld. Arbitrator by a detailed order passed an award declaring the private respondents as members of the Woodburn Park Cooperative Housing Society Limited and further held that the said private respondents are also entitled to get a flat each on the basis of the sanctioned plan for 56 flats with the cost at par with the other members of the said society. The Appellate Tribunal upheld the order of the arbitrator.

26. Mr. Surajit Nath Mitra, the learned senior Counsel appearing on behalf of the writ petitioner submits that the representation made by the private respondents on 15th June, 1980 before the Registrar of Cooperative Society cannot be treated as representation since the Registrar was not authorised to receive such representation. The subject matter of such representation pertains to the dispute regarding termination of their membership. Significantly no dispute case was filed by the respondent nos. 3 and 4 and the said Dwarkadas Kothari under the West Bengal Societies Act, 1973. The present dispute case has been filed by claimants after their attempt to reopen and revive their time barred claim by the Hon"ble Supreme Court was dismissed. Notwithstanding the dismissal of their interlocutory application by the Hon"ble Supreme Court this arbitration case has been filed. The said claim is ex facie time barred.

27. Mr. Surojit Nath Mitra, the learned senior Counsel appearing on behalf of the writ petitioners submits that the claim made before the learned arbitrator is ex facie barred by the limitation. The learned arbitrator has completely misdirected his mind in holding that a reference is maintainable by overlooking the fact that the claimants contended before the learned arbitrator that it is a monetary claim. If it was a monetary claim then Section 50 as well as Section 95(2) would apply and such claim cannot travel beyond the period of three years when the right to claim such amount accrues. Mr. Mitra has referred to the primary order as well as the final order has

not been challenged by the private respondents. The private respondents cannot take advantage of a direction passed by the Hon"ble Supreme Court in respect of thirteen objectors who had initially approached this Hon"ble Court and got certain orders in their favour. It is submitted that the order passed by the High Court and affirmed by the Division Bench in connection with the earlier writ petition filed by thirteen objectors were set aside by the Hon"ble Supreme Court. The Registrar was directed only to consider the case of the thirteen objectors and non-else. Subsequently, on an interlocutory application filed by the present writ petitioners who were proforma respondents in the said proceeding, the Hon"ble Supreme Court dismissed the said interlocutory application in which the present private respondents have prayed for a declaration that the present private respondents shall be considered to be at par with thirteen persons and, therefore, they may be accorded the same benefits as extended to such thirteen objectors. The said respondents have also prayed for setting aside of the orders dated 25th September, 2008 and 5th March, 2009 by which the authorities concerned failed to extend the same benefit to the private respondents and also had stated that the society against which a claim has been made does not expect. Mr. Mitra submits that in view of an express order denying the reliefs as claimed in the interlocutory application it is not more open to the private respondents to raise any dispute under Section 95 of the respondents Co-operative Societies Act, 1983. Mr. Mitra submits that the preliminary objection filed by the present petitioners with regard to maintainability of the reference on the ground of limitation as well as the Hon"ble Supreme Court's judgment were negatived by the learned arbitrator on a total misconstruction and misreading of the judgment of the Hon"ble Supreme Court as well as on a total misreading of Sections 50 and 95 of the West Bengal Co-operative Societies Act, 1983.

28. Mr. Bachwat submits that the Court should approach the Award with a desire to support, rather than to destroy the Award that Arbitrators are not required to deal every ground or reason and are not required to give elaborate reasons, the Court cannot substitute its evaluation of law or facts to come to a different conclusion. The Court does not sit in appeal and cannot re-visit the evidence or the arguments advanced before the Arbitrator; so long as the view taken by the arbitrator is a plausible view, the Court cannot set aside the Award only because it can come to a different conclusion of fact or law or a better view; the reasonableness of the reasons given by the arbitrator cannot be challenged; the Arbitrator is the sole judge of the quality and quantity of evidence, and re-application of evidence is not permissible. An Award is not open to challenge on the ground that it is erroneous; right or wrong, the decision is binding and is not be lightly interfered with. The Award has been upheld on the statutory appeal by the appellate forum. Thus there are concurrent findings which should not be readily interfered with. The scope of challenge is now further limited in a challenge to the award under Article 226 of the Constitution of India.

29. It is further submitted that the respondent's claims are barred by reason of the orders of the Hon"ble Supreme Court are also without merit. The order dated April 2, 2008 passed by the Hon"ble Supreme Court of India was necessarily restricted to the aforesaid 13 persons. The said order did not in any way or manner prevent a decision being taken with regard to the respondents objections or come in the way of its rights. The subsequent order dated 9th November, 2009 passed by the Supreme Court dismissing the respondents' application cannot in any way or manner affect the respondents' rights, inter alia, as:-

- i. No order could have been passed in the interim application in a disposed of appeal.
- ii. A simpliciter order of dismissal of an interim application without any reasons cannot result in any merger or res-judicata.

30. The argument on behalf of the writ petitioners that the matter should have been decided under the provisions of the West Bengal Cooperative Societies Act, 1973 and not under the Act of 1983 should also be rejected. Such point was neither raised in the arbitration or in the appeal and has also not been properly in the pleadings and should not be permitted to be raised for the first time at this stage. In any event, the 1973 Act having been repealed, the same could not have been applied in taking any decision in the matter.

31. The principle ground of challenge to the award appears to be two fold, namely, (i) it is ex facie barred by limitation; (ii) The claim petition is barred by the principles of res judicata.

32. The moot question is when the cause of action arises. It appears that soon after the final order was passed by the Deputy Registrar on 23rd June, 1980, a batch of 13 writ petitions were filed in this Court questioning the order passed by the Registrar. It appears that the said persons were denied membership on the ground that they had resigned from the membership of the society. The writ petitions were pending for long and ultimately by a judgment and order dated April 2, 2008, the case of the said 13 persons were directed to be considered by the Registrar. The private respondents in this proceeding were also parties to the said writ petition as proforma respondents. The denial to the allotment of the flat in favour of the private respondents is based on letters of resignations submitted by them. This reason was known to the respondents on June 23, 1980. In the letter dated 7th February, 1979, the respondent-claimants clearly evinced their intention in getting their refund of the contribution made towards the building and this explains adequately the reason for including the name of the claimants in the list of non-members. It may be true and quite possible that the said order was passed by the Deputy Registrar without hearing the claims and could be in violation of the principles of natural justice but the writ petitioners did not take any immediate remedial measures. The order dated 23rd June, 1980 was final in all respect.

33. They were similarly situated as that of the other writ petitioners who had filed the writ petition. They, however, did not challenge the order of the Deputy Registrar. The order of the Hon"ble Supreme Court would show that the Hon"ble Supreme Court was fully aware of the nature of the controversy and had only allowed the 13 writ petitioners to approach the Registrar for adjudication of their claim. The law only protects a vigilant not a fence-sitter. The private respondents precisely knew the reason for their non-inclusion in the list of members. The list of non-members would include creditors. The grievance of the petitioner was that they should be considered as members. In so far as the claim of their right to membership is concerned, in my view, has already been determined by the Deputy Registrar, Co-operative Society in the final order dated June 23, 1980.

34. The concept of continuing cause of action arose principally in regard to the point of time up to which damages could be assessed in a given action and way back in the year 1804, in the decision reported as *Hole Vs. Chard Union* (1804(1) Ch. 298), Lord Lindley had observed:-

"What is a continuing cause of action? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought."

35. In the same decision Lord Justice A.L. Smith concurred in the following words:-

"If once a cause of action arises, and the acts complained of are continuously repeated, the cause of action continues and goes on *de die in diem*. It seems to me that there was a connection in the present case between the series of acts before and after the action was brought; they were repeated in succession, and became a continuing cause of action. They were an assertion of the same claim-namely, a claim to continue to pour sewage into the stream--and continuance of the same alleged right. In my opinion, there was here a continuing cause of action within the meaning of the rule."

36. This is how, in civil law, a continuing cause of action was understood; and a closer look would show that a recurring cause of action i.e. same act which constitutes the original wrong is repeated again and again would have been a better phrase. Thus, a continuing cause of action would be a recurring cause of action; or to put it differently the phrases, "continuing cause of action" and "recurring cause of action" would be synonyms.

37. The decision of the Supreme Court [Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others,](#) makes us understand, with greater clarity, as to what would be the essence of a continuing offence. It was observed:-

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by a wrongful act and what may be described as the effect of the said injury."

38. The cause of action in this case has been claimed to have arisen from January 12, 1979 and continued throughout the period including January 14, 1980, September 13, 2008, March 31, 2009 and September 1, 2010.

39. Clause 3 of the said order does not give a cause of action to the private respondents to file the dispute case in 2009. In fact, the private respondents approached the Hon'ble Supreme Court for extending the similar benefit that was extended to the 13 petitioners on the same plea that they are similarly situated. The Hon'ble Supreme Court declined to extend such benefit. It is true that the said application was dismissed without any reason but from a reading of the application filed before the Hon'ble Supreme Court it is clear that the private respondents considered themselves as person aggrieved by reason of the order of the Deputy Registrar passed in June, 1980 and there is no explanation as to why the private respondent did not approach the arbitrator or the Hon'ble Court immediately thereafter or within the period of limitation. Cause of action is a bundle of facts which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. Cause of action is not limited to the actual infringement of right sued on but it includes all material facts on which it is founded.

40. There has been a complete delay, laches and negligence on the part of the respondents to assert their right. Mr. Bachwat would strongly argue when the society has failed to produce the letters of resignation, which form the basis of the dispute, it would show that the denial of allotments based on such alleged letters were baseless and mala fide. The society has given explanation and it says that the said letters are not readily available on record after the bifurcation that had taken place in 1980. It is expected that the respondents would have some documents to show that they had contemporaneously denied the resignation and should have been in a position to produce the letter dated August 26, 1977 referred to in the letter dated February 7, 1979. Moreover, the claimants did not take immediate steps to redress their grievance unlike the 13 persons who filed the writ applications. However, at this distant point of time, mere non-production of the letters of resignation by the society could not resurrect or give a cause of action to the petitioners who had been all throughout in slumber and never vigilant and agile to

enforce their claim. The fruits of the litigation and the order passed by the Hon"ble Supreme Court in respect of 13 writ petitioners cannot give a cause of action to the present claimants.

41. In view thereof, the writ petition succeeds. The orders of the learned arbitrator and the appellate tribunal are set aside.

42. In view of the aforesaid, G.A. No. 2927 of 2013 also stands dismissed.

43. Urgent xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.