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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 30th September, 2026.
Uploaded on: 5th October, 2026.

CNR No. DLHC010444672026

+ **W.P.(C) 13715/2026**

DEVENDER MUDGAL & ANR.Petitioners

Through: Mr. Devender Mudgal, in person.
versus

REGISTRAR OF COOPERATIVE SOCIETIES
& ORS.

.....Respondents

Through: Mr. Shashi Pratap Singh, Adv.
Mr. Niwas Kumar, Adv. for R-2 &3.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DINESH BHATT

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioners under Article 226 of the Constitution of India seeking execution of order dated 02nd July, 2025 passed by the Registrar of Cooperative Societies (*hereinafter* 'RCS') directing issuance of membership.
3. The Petitioners are the purchasers of Flat no. E-304, Ispatika Apartment CGHS, Plot 29, Sec-4, Dwarka, New Delhi-110078 (*hereinafter* 'flat'), who unfortunately continue to struggle to obtain membership of the Society.
4. The Petitioners had purchased the said flat for Rs. 1,91,00,000/- on 28th March, 2024 in an auction conducted by the Bank of Baroda, Dwarka, Sector 12, New Delhi 110075 branch in SARFAESI proceedings which was commenced by the Bank, against the earlier owner Mr. Lalit Kumar Jha who had mortgaged the said flat in favour of the Bank.



5. In the sale certificate dated 05th June, 2024 issued with respect to the auction proceedings, the property was described with two errors. The description of the property for the auction is as under:

“DESCRIPTION OF THE IMMOVABLE PROPERTY

Equitable mortgage property of Property Flat No. E-304, 3rd Floor, Ispatika Apartments, Ispat CGHS Ltd, HIG Category, Plot No. 29, sector 4, Dwarka, New Delhi-110075 admeasuring 95.54 sq. Mtrs. in the name of Mr. Lalit Kumar Jha s/o Sh. Shesh Narayan Jha, vide reg. no. 10954 dated 26/09/2012”

6. The two errors in the above description are as follows -
- (i) The name of the Apartments instead of Ispat is mentioned as Ispatika;
 - (ii) The area of the flat is mentioned as 95.54 sq. mtrs. whereas in fact, due to increase in the Floor Area Ratio (*hereinafter ‘FAR’*) after the initial mortgage, the flat was admeasuring 113 sq. mtrs.
7. The bank may have obviously not been aware of the increase in the FAR or must have inadvertently not mentioned the new FAR. It had gone ahead and given the description of the property in the the sale certificate by mentioning the name of the Society as ***Ispatika CGHS***.
8. The Petitioners had paid a sum of Rs. 1,91,00,000/- for purchasing this flat in the auction and the sale deed dated 11th June, 2024 was duly executed in favour of the Petitioners, however, in the said sale deed as well, the two errors relating to the FAR and the name of the Society, continued to be perpetuated.
9. The purchase of the flat became the point of beginning of the



harassment for the Petitioners who have not been able to get the membership of Ispat Co-operative Group Housing Society Ltd. (*hereinafter* 'Society') till date.

10. The events which have transpired would show that after the sale deed was executed, the Petitioners applied to the Society for transfer of membership on 23rd August, 2024.

11. Thereafter, the Society vide its letter dated 16th September, 2024 directed the Petitioners to submit the required documents i.e., Copy of the Conveyance Deed, Copy of Registry, Share Certificate in original of flat No.E-304, Particulars of the owners, prescribed affidavit as per DCS Rules, Residential Proof & Receipts of Rs.610/- towards Membership Transfer Fee.

12. On 10th October, 2024, the Petitioners submitted the required documents to the Society except the original Share Certificate, which had not been provided yet by the Bank of Baroda in original.

13. Despite this, the membership was not granted to the Petitioners which led to the Petitioners approaching the RCS office *vide* application dated 20th January, 2025.

14. The RCS office took cognizance of the matter and called upon the Society to furnish comments. Thereafter, the Petitioner submitted all the documents except the original Share Certificate which was not in the possession of the bank also.

15. The matter was referred under Section 91 of the Delhi Co-operative Societies Act, 2003 (*hereinafter* 'DCS Act') but the Society did not appear in the said proceedings. The reason the Society gave for not appearing is that it had submitted its written comments.

16. On 2nd July, 2025, an order was passed by the RCS wherein after



considering the reply submitted by the Society and the reply of the Bank of Baroda, the following directions were given:

“16. (Required documents u/s 92)

Needless to mention here that the appellant purchased this flat through Sale Deed by way of auction from Bank of Baroda, but it necessity to submit the required documents to the society in terms and condition as per rule 92 (6) of DCS Act, 2003, which stated that the transferee shall submit the following documents along with application form for satisfaction of the committee:-

a) Affidavit on a stamp paper of Rs.10/- for discharging all the liabilities to the cooperative society in respect of the flat/plot or common areas which may be outstanding against the allottee or occupant of the flat or plot within a period of ninety days of raising the demand by the society.

b) Attested copy of duly registered sale deed, agreement to sell and conveyance deed; as the case may be.

c) Original share certificate issued to the allottee and in case the original share certification is not available, the transferee shall execute an indemnity bond to indemnify the society for any losses caused on this account.

d) Receipt of transfer fee of five hundred rupees for the Common Good Fund of the co-operative housing society.

On the receipt of the documents mentioned above, committee shall transfer the membership to the transferee.

In view of the above and in exercise of powers vested in me under provision of Section 91 read with sub rule-(6) of Rule 92 of DCS Act 2003 the respondent society through this order is hereby directed to issue the membership to the appellants Sh. Devender Mudgal & Mrs. Sapna Mudgal in r/o The Ispat CGHS Ltd., Ispatika Apartments, Plot No.29, Sector-4, Dwarka, New Delhi-110078, after completion of necessity codal formalities of documents, as per provisions contained



under sub rule 92(6) of DCS Act, and bye-laws of the co-operative housing society, within 15 days from the date of receipt of this order.

It is ordered accordingly.”

(extracted from original)

17. As can be seen from the above order, the Society was directed to issue membership to the Petitioners in respect of the said flat within 15 days from the date of receipt of the said order.

18. Thereafter, a notice was sent by Mr. Lalit Kumar Jha dated 4th July, 2025 to the Society claiming rights in 16% of the flat i.e., 18 sq. metres (113 sq. mtrs – 95 sq. mtrs.). The Society then directed the Petitioners to get the errors in the sale deed rectified both in the name of the society and the measurement of the flat.

19. This notice of Mr. Lalit Kumar Jha is completely bereft of any merit, inasmuch as the said Mr. Lalit Kumar Jha had filed a suit before the District Court titled ***CS DJ ADJ 769/2025 Lalit Kumar Jha vs. Devender Mudgal & Ors.*** seeking prayers for partition, declaration, etc.

20. In the said suit, *vide* order dated 21st July, 2025 the plaint was returned as being barred by law with the following observations:

“1. Heard on the suit.

2. Briefly stated, the case of the plaintiff is that he had availed a loan of ₹6 crores from Dena Bank (now merged with Bank of Baroda) and, as security, mortgaged several properties including the suit property bearing Flat No. E-304, Ispatika Apartments, Plot No. 29, Sector-4, Dwarka, New Delhi. The actual carpet area of the suit property is stated to be 113.614 m².

3. Upon the plaintiff's account being classified as a Non-



Performing Asset (NPA), the Bank took physical possession of the entire mortgaged property on 19.02.2024 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). Thereafter, the Bank got the property evaluated and proceeded to auction it. In the auction process, the carpet area of the flat was described as 95.54 m² instead of 113.614 m².

4. The suit property was ultimately purchased by defendant nos. 1 and 2 through the said auction, and a sale certificate was issued in their favour. The sale deed executed in their name also mentions the area as 95.54 m².

5. The plaintiff alleges that by incorrectly stating the carpet area in the sale documents, the Bank, in collusion with the auction purchasers (defendant nos. 1 and 2), defrauded him. He contends that since only 95.54 m² was sold, he retains ownership of the balance 18m.² He further alleges that the Bank granted undue favour to the purchasers by permitting them to deposit the sale consideration with a delay of 54 days, whereas the prescribed period was 15 days.

6. The plaintiff now seeks partition, possession, and permanent injunction in respect of the alleged unsold portion of 18 m².

7. I have enquired from learned counsel for the plaintiff as to how the jurisdiction of this court is made out since the relief that the plaintiff is primarily seeking is the release of 18 m² of the suit property attached under the SARFAESI Act. Learned counsel for the plaintiff has submitted that since the auction sale has been concluded, the jurisdiction of the Debt Recovery Tribunal (DRT) no longer subsists, and this Court is competent to adjudicate the question of ownership.

8. I have considered the submissions. I am not persuaded by the reasoning advanced by learned counsel for the plaintiff. The reliefs sought in the present



suit are clearly aimed at circumventing the remedies and jurisdiction prescribed under the SARFAESI Act. The plaintiff is trying to do indirectly, what he cannot do directly.

9. It is not disputed that the entire suit property was mortgaged to the Bank. Upon default and classification as NPA, the Bank took possession and auctioned the entire flat. Even if the auction notice or sale deed mentions the area as 95.54 m², such discrepancy, if any, does not vest in the plaintiff any residual or independent ownership over the balance portion of the flat. Once the entire unit stood mortgaged and was proceeded against under SARFAESI, the plaintiff cannot claim any surviving title in a property that stood fully encumbered and was dealt with as a single asset under a lawful statutory process.

10. The plaintiff has not pleaded that the entire claim of the bank (creditor) has been satisfied. Assuming that some portion of the suit property would still be available for releasing to the plaintiff (borrower) after satisfaction of the bank's (creditor's) claim, even then the plaintiff has remedy under Section 17 of the SARFAESI Act to file an application before the DRT and apply for restoration of the possession of the secured assets (suit property.)

11. Section 17 of the SARFAESI Act provides a complete remedy to the aggrieved borrower. In this regard, reference may be made to *Celir LLP v. Bafna Motors (Mumbai) (P) Ltd.*, (2024) 2 SCC 1, wherein the Hon'ble Supreme Court held:

"Section 17 of the SARFAESI Act is a complete code that confers upon the DRT the jurisdiction to examine all the steps or measures taken by the secured creditor under the Act and provide remedies to any person aggrieved by any of those measures. By virtue of the said provision the DRT is clothed with



a wide range of powers, to determine any issue or aspect pertaining to the SARFAESI proceedings initiated by the secured creditor and further a power to interfere with the same where necessary. "

12. Similarly, the plaintiff's grievance regarding the delay of 54 days granted to the auction purchasers for deposit of the sale consideration is also a matter squarely falling within the ambit of SARFAESI. Such objections ought to have been raised before the DRT, which is the appropriate forum.

13. The jurisdiction of civil courts is expressly barred under Section 34 of the SARFAESI Act, where the DRT has jurisdiction to adjudicate.

14. The plaintiff also alleges connivance between bank officials and auction purchasers. However, the Bank's own valuation report, relied upon by the plaintiff himself, records the area as 113.614 m² and values the property at ₹1.71 crores. The auction purchasers paid ₹1.91 crores, negating any suggestion of undervaluation or collusion.

15. Significantly, the plaintiff has not filed the sale deed under which he acquired the suit property. A bare perusal of the valuation report indicates that the plaintiff himself had purchased only 95.64 m² of the suit property vide sale deed dated 28.09.2012. If the property purchased by him was 95.64 m² and the same has been sold in the auction, the plaintiff retains no right, title, or interest in the suit property.

16. The present suit, seeking partition and possession of part of the auctioned flat, is in effect a collateral challenge to the auction proceedings and the validity of the sale effected under the SARFAESI Act. This Court cannot entertain such a challenge in the garb of a civil suit.

17. In view of the above discussion, the present suit is clearly barred by law. Accordingly, the plaint is rejected under Order VII Rule 11(d) of the Code of Civil



Procedure, 1908.

18. Let the file be consigned to the record room.”

21. The above order dated 21st July, 2025 ought to have put to rest any claims of Mr. Lalit Kumar Jha, however, unfortunately, the society continued to canvass the case of Mr. Lalit Kumar Jha and continued to insist upon the Petitioner to obtain a rectified sale deed.

22. In respect thereof, the RCS office *vide* its notice under Section 105 of the DCS Act, 2003 dated 25th May, 2026 reiterated that the membership shall be granted to the Petitioners subject to only one condition that a fresh indemnity bond shall be submitted by the Petitioners. The relevant observations are set out below:

“OBSERVATIONS:

After going through the present claim petition and its written submission by the Appellant/Respondent and pleading by both the parties, the claim fits the parameters under Section 105 of the DCS Act, 2003 read with Rule 124 of DCS Rules 2007.

The necessary pleading have been completed in the present claim petition by way of conducting the hearing. I have gone through the submissions of the Claimant society and written submission of the Respondent which has placed on record. In the light of the said facts the above dispute is disposed off.

CONCLUSION:

On the basis of records available on file, proceedings/hearings conducted and arguments put forward/both the parties, following conclusions are drawn:

A. Membership will be granted to the Appellant with the condition to file the fresh Indemnity Bond before the Society.

Accordingly the case is disposed off.”



23. This order is stated to be under appeal before the Financial Commissioner by the Society.

24. The Court has heard the Petitioner who is appearing in person as also the counsel for the RCS and Mr. Ajay Kumar Bhayana, the Secretary of the society and ld. counsel Mr. Niwas Kumar for Respondent No. 2-12.

25. A short affidavit deposed by Mr. Hem Chandra Jha, the Deputy Registrar of Cooperative Societies was handed over in Court by the RCS. Further, a copy of Legal Notice sent by Mr. Lalit Kumar Jha to the Society was also handed over by the Society. The said documents are taken on record.

26. After hearing the Society, the Court is clearly of the opinion that the Society cannot deprive the Petitioners of their rights in the property by not giving them the membership. Firstly, the Petitioners cannot be blamed for the wrong description of the area of the flat in the registration documents executed by the Bank of Baroda. Secondly, the Petitioners having purchased the property in the bank auction proceedings, such errors appear to have crept in, in the sale deed. The auction notice described the property with the correct name of the Society and hence the identity of the Flat is not in dispute. The only issue remains is the FAR. The Petitioners have paid a huge amount of consideration of Rs.1,91,00,000/- for purchasing the flat in the bank auction. The claim of Lalit Kumar Jha to 16% of the flat is a completely dishonest attempt to create spokes in the wheel for the Petitioners who are running from pillar to post for obtaining membership.

27. The two orders of the RCS office dated 2nd July, 2025 and 25th May, 2026 directing the Society to issue membership to the Petitioners, have also not made the Society budge from its position of supporting the case of Mr. Lalit Kumar Jha.



28. The notice issued by Mr. Lalit Kumar Jha dated 4th July, 2025 and any proceedings taken by the Society pursuant to the said notice are completely contrary to law in the light of the decision dated 21st July 2025 of the District Judge in the suit filed by Mr. Lalit Kumar Jha.

29. Clearly, Mr. Lalit Kumar Jha has no rights in the flat at all and the claim of rights to 18 sq. mtrs. is completely mala fide and bogus to say the least.

30. The Society's conduct is also not above board in this matter. The RCS having directed the society to give the membership by executing an indemnity bond by the Petitioners, the society ought to have complied with the same. Clearly, the Society is not behaving in a bona fide manner.

31. Mr. Niwas Kumar, Id. Counsel for the Respondents No. 2-12 repeatedly urges this Court to look at the valuation report prepared by the bank in respect of the flat to argue that the bank was aware of the increase in the area of 18 sq. mtrs.

32. Even in a situation where the bank was aware of the increase in the FAR, the fact that the flat itself was mortgaged cannot be disputed at all. Once the flat is mortgaged, the increase in the FAR ought to go to the beneficiary or the purchaser of the flat, the same cannot be retained by the earlier owner who had mortgaged the flat.

33. Under these circumstances, the following directions are issued:

- (i) The present order shall be treated as a membership to the Petitioners of the society. The membership certificate be issued by the society within a period of one week from the date of this order.
- (ii) The membership certificate shall be forwarded by the Society to the RCS and be taken on record by the RCS.
- (iii) The membership of the Petitioners shall be operational with effect



from the date when the RCS passed the first order i.e., 2nd July, 2025.

34. The Society shall pay a sum of Rs. 25,000/- as costs to the Petitioners, within two weeks.

35. The petition is allowed in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

DINESH BHATT, J.

SEPTEMBER 30, 2026

dj/as