

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of decision: 11<sup>th</sup> February, 2010**

+ **W.P.(C) 11095/2009 & CM No.10402/2009**

PARWANA CGHS LTD ..... Petitioner  
Through Mr. Jitender Mehta, Adv.

versus

THE REGISTRAR DELHI COOPERATIVE  
TRIBUNAL & ORS. .... Respondents  
Through Mr. V.K. Tandon, Adv. with  
Ms. Parul Sharma, Adv. for  
Registrar of Co-operative  
Societies.  
Mrs. Raj Ahuja, Respondent No.4  
along with her daughter in  
person.

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

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

**GITA MITTAL, J (Oral)**

1. The petitioner has filed this writ petition to challenge the award dated 9<sup>th</sup> January, 2009 passed by Shri Dhirender Kumar, the arbitrator appointed under Section 70 of the Delhi Cooperative Societies Act, 2003.
2. Shri Rana Pratap Bindra, respondent no.3 had sought the appointment of an arbitrator in respect of his claims and disputes against the petitioner society and respondent no.4 herein on the ground that there was seepage coming into his flat from the terrace of the building and/or the flat located above his flat belonging to Mrs. Raj Ahuja, Respondent No.4 i.e. Flat No.A-28, Parwana Apartments, by

moving a petition under Section 70 of the Delhi Cooperative Societies Act, 2003. This petition was disposed of apparently on 29<sup>th</sup> September, 2008 as it was the admitted position that disputes, which were referable to arbitration, existed between the parties.

3. The learned arbitrator appointed/nominated by the Registrar of Cooperative Societies has passed the award dated 9<sup>th</sup> January, 2009 whereby the following directions have been issued:-

“The claim is allowed. The society is directed to get the terrace of above the flat no.A-26 repaired well before the onset of the monsoons and the cost shall be borne by defendant no.1 society alone. Thereafter the claimant's flat shall be jointly inspected during monsoon by the parties to ensure that there is no recurrence of the seepage. If the problem is rectified there shall be no need to carry out any repairs in the flat of defendant no.2. However, in case the seepage re-occurs, the repairs shall be carried out in the flat no.2 of the defendant at her cost. The defendants are directed to pay, jointly and severally, a sum of Rs.20,000/- to the claimant on account of the expenses incurred by him so far. The defendants are also directed to pay cost @ 10% of the awarded amount and shall also be liable to pay further interest @18% p.a. on the total amount from the date of the award till final payment.”

4. The petitioner has preferred this petition on the ground that the Delhi Cooperative Tribunal is presently not constituted and therefore, the petitioner's application to seek interim stay of the impugned award cannot be entertained.

5. We have heard learned counsel for the petitioner as well as the representative/daughter of respondent no.4 Smt. Raj Ahuja, who is present with respondent no.4.

6. It is the submission of respondent no.4 that she has already carried out the repair in her flat by changing the internal fittings and pipes. She also submits that she is also a victim of the same problem and there is a lot of seepage coming into her flat as well on account of

the terrace and the common drainage pipelines not being repaired by the society. She further states that in case after the repair is carried out by the petitioner society, the problem of seepage in the flat of Mr. Bindra still persists, she would be willing to carry out any further repair in her flat which may be required.

7. Having heard the arguments, we are satisfied that the petitioner has not made out a prima facie case for grant of any interim order till the appeal of the petitioner before the Delhi Cooperative Tribunal is taken up for hearing. We are also of the view that there is no balance of convenience in favour of the petitioner inasmuch as the grievance of respondent no.3 was that there was seepage coming into his flat from the terrace above his flat as well as from the flat of Smt. Raj Ahuja, respondent no.4.

8. The directions issued by the arbitrator are primarily that the society should repair the terrace and in case the seepage in the flat of Shri Bindra still persists, a direction has been issued to the respondent no.4 to carry out repairs in her flat so as to deal with the seepage problem being faced by Shri Bindra.

9. It is not the obligation of any individual member to maintain the common areas such as the common terrace or the common drainage pipelines or rain water drains installed in the cooperative society. The said obligation squarely falls on the shoulder of the petitioner society. It is the obligation of the society to maintain the same and to repair them, to ensure that no seepage results on account of any defect in the terrace or the drainage system.

10. Our attention has been drawn to Section 93 of the Delhi Cooperative Societies Act, 2003. The said provision empowers the society to direct the members to carry out the repairs within their own

flats and if the same is not so carried out, the society is obliged to carry out the repairs and to recover the expenses incurred as arrears of land revenue from the concerned member. For this reason, we see no justification in the stand of the society that the obligation to carry out the repairs, even in respect of common area and services, is not that of the society.

11. Another submission of learned counsel for the petitioner is that the award was made beyond the period of limitation. He submits that the same ought to have been made within a period of three months from the date of the passing of the order under Section 70 of the Delhi Cooperative Societies Act, 2003. Reliance is placed on Rule 89 of the Delhi Cooperative Societies Rule 2007 in this regard.

12. We do not find any merits in this submission of the petitioner. Perusal of Rule 89 shows that the date on which the reference is made is not prescribed as the starting point of limitation. Reference of disputes is made by the Registrar to the arbitrator. The Arbitrator has no control as to when the communication appointing him the Arbitrator is issued by the office of the Registrar or received by him. Therefore, the time taken by the Registrar in communicating his order cannot be included within the period granted to the arbitrator to make the award. Similarly, the Arbitrator cannot proceed unless the parties are put to notice. Therefore, the time consumed in putting the parties to notice would also have to be excluded for the purpose of computing the time available to the arbitrator to make his award. A perusal of the award shows that the arbitrator had issued a notice to the parties to appear before him on 4<sup>th</sup> November, 2008. Therefore, the date on which the arbitrator entered reference would be 4<sup>th</sup> November, 2008. The award has been made on 9<sup>th</sup> January, 2009 i.e. well within the

period of three months from the date on which he entered upon the reference. Therefore, this submission of the petitioner is rejected as being without any merit.

13. Respondent no.4 states that no notice of the arbitration proceedings had been served upon her. Since the entire record of the Arbitrator has not been placed before us, it is not for us at this stage to comment with regard to the service of the respondent no.2 in the Arbitration proceedings. However, it shall be open to her to agitate the said submission as well as all other submissions she may have, by preferring an appeal before the tribunal or in any other legal proceedings available to her without prejudice to the rights and contentions of the other parties.

We may make it clear that nothing herein contained is an expression of opinion on the merits of the contentions of the petitioner so far as the other aspects of the award are concerned.

The writ petition and application are disposed of in the above terms.

**GITA MITTAL, J**

**VIPIN SANGHI, J**

**FEBRUARY 11, 2010**  
**aa**