

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

+ **C.M.(M) No. 963/2008**

% **May 18, 2011**

SH. R.S. CHAUHAN Petitioner
Through: Mr. Viraj R.Datar and Mr. Chetan Lokur,
Advocates.

VERSUS

SMT. GEETA RANI Respondent
Through: Mr. Rakesh Kr. Khanna, Sr. Advocate with
Mr. Ratnesh Bansal, Ms. Seema Rao and
Mr. Vishal Panwar, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)

CM (M) 963/2008 & CM No.11861/2008

1. The limits to which tenants, whose tenancies are terminated and who have no protection against eviction under the Delhi Rent Control Act, 1958, will go to frustrate the landlords in the latter's suits for possession, is amply demonstrated by the arguments which have been raised on behalf of the petitioner in the present case. For the reasons given hereafter, this petition

is not only misconceived, but also a gross abuse of the process of law and will have to be dealt with accordingly.

2. The facts of the case are that the respondent/landlord is the owner of the premises G-3, Siddh Apartment, Plot No.107, I.P.Extension, New Delhi. These premises were purchased by the respondent/landlord from the earlier owner Shri S.L.Taneja. It is the admitted position that after transfer of the property in favour of the respondent/landlord, an agreement of lease was entered into by the petitioner with the respondent/landlord, and in fact rent was also paid pursuant to the lease agreement.

3. Since the rate of rent was Rs.6,000/- per month i.e. more than Rs.3500/- per month, the petitioner/tenant had no protection from the Delhi Rent Control Act, 1958. There was also no registered lease deed giving a specific period to the tenant to occupy the premises and consequently, the tenancy of the petitioner was terminated by means of a notice dated 11th September, 2006 and whereafter the subject suit for possession, arrears of rent and the maintenance charges etc. was filed.

4. The subject suit for possession was decreed by the court of first instance under Order 12 Rule 6 CPC vide its order dated 31st October, 2008. The appeal filed by the present petitioner before the Appellate Court was also dismissed by the order dated 20th May, 2009 and hence this petition.

5. Learned counsel for the petitioner raised ingenious arguments in support of the petition that there was no jurisdiction of the Civil Court to

decide a suit filed by a landlord to evict a tenant, who occupies a flat in a cooperative society. This stand was predicated on the basis of Sections 83(1) and (2), 74(m) and Section 132 of the Delhi Cooperative Societies Act, 2003 and which provisions read as under:-

“83 Settlement of disputes

- (1) Notwithstanding anything contained in any law relating to rents or any other corresponding law for the time being in force in Delhi, any dispute relating to the occupation or recovery of possession of any plot, dwelling unit or flat in any co-operative housing society, the recovery of dues payable by a member or sub-allottee to a co-operative housing society or vice-versa, arising on or after the date of the commencement of this Act and suits or proceedings pending in any court after such commencement, shall be deemed to be a dispute within the meaning of Section 70 of this Act and shall be decided in accordance with the provisions of this Act, and no court or other tribunal or authority shall have jurisdiction to entertain and decide any proceedings in respect of such disputes.
- (2) Notwithstanding anything contained in the law relating to rents or any other corresponding law for the time being in force, no licensee, care-taker, or sub-allottee who is occupying the dwelling unit or flat, or plot of land in a co-operative housing society shall be a tenant of such dwelling unit or flat or plot of land within the meaning of that law.”

74(m) “sub-allottee” means an individual or body of persons; whether incorporated or not, in whose favour the possession of the dwelling unit or part thereof is transferred for a period of not less than ninety days, and includes a tenant, licensee, paying guest and caretaker thereof.

132. Bar of jurisdiction of civil or revenue courts

- (1) Save as provided in this Act, no civil or revenue court shall have any jurisdiction in respect of-
 - (a) the registration of a co-operative society or its bye-laws or of an amendment of a bye-law;
 - (b) the removal of the committee;
 - (c) any dispute required under section 70 to be referred to the Registrar; and
 - (d) any matter concerning the winding up and the dissolution

of a co-operative society.

(2) While a co-operative society is being wound up, no suit or other legal proceedings relating to the business of such co-operative society shall be proceeded with or instituted against the liquidator as such or against the co-operative society or any member thereof, except by leave of the Registrar and subject to such terms as he may impose.

(3) Save as provided in this Act, no order, decision or award made under this Act, shall be questioned in any court on any ground whatsoever."

6. In order to appreciate these provisions, one would also have to refer to Sections 70 and 71 of the said Act and which require the referring of the disputes; between members inter se, persons who claim through members with other members or the society or the society with the members or other disputes pertaining to the business of the society; to arbitration. These provisions read as under:-

"70. Disputes which may be referred for arbitration

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the co-operative society or its committee against a paid employee of the co-operative society arises-

- (a) Among members, past members and persons claiming through members, past members and deceased members; or
- (b) Between a member, past member or person claiming through a member, past member or deceased member and the co-operative society, its committee or any officer, agent or employee of the co-operative society or liquidator, past or present; or
- (c) Between the co-operative society or its committee and any past committee, any officer, agent or employee, or

any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the co-operative society; or

- (d) Between the co-operative society and any other co-operative society, between a co-operative society and liquidator of another co-operative society or between the liquidator of one co-operative society and the liquidator of another co-operative society,

such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such disputes.

(2) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

(3) The Registrar shall decide the aforesaid question within a period of ninety days and in case the aforesaid question, as enumerated under sub-section (2) is not decided within the stipulated period of ninety days, the dispute shall be deemed to have been admitted under section 70 of this Act and the same shall be referred for decision under section 71.

(4)(a) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under sub-section (1) shall-

- (i) When the dispute relates to the recovery of any sum including interest thereon due to a co-operative society by a member thereof, be computed from the date on which such member dies or ceases to be member of the co-operative society, be three years;
- (ii) save as otherwise provided in sub-clause (iii), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), be six years from the date on which the act or omission with reference to which the dispute arose or took place;

- (iii) When the dispute relates to a co-operative society which has been ordered to be wound up under section 95 or section 96 or section 97 or in respect of which an administrator has been appointed under section 37, be six years from the date of the order issued under section 95 or section 96 or section 97 or section 37, as the case may be; and
 - (iv) When the dispute is in respect of an election of an officer of a co-operative society be thirty days from the date of the declaration of the result of the election.
- (b) The period of limitation in the case of any other dispute except those mentioned in the foregoing clause which are required to be referred to the Registrar shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute was a suit and the Registrar a civil court.
- (c) Notwithstanding anything contained in clauses (a) and (b), the Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.
- (5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitrations under this Act, as if proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

71. Reference of disputes to arbitration

- (1) The Registrar may, on the receipt of reference of dispute under section 70-
- (a) decide the dispute himself, or
 - (b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or
 - (c) refer it for disposal to an arbitrator.
- (2) The method, manner of selection, appointment of arbitrators, their

qualifications, terms and conditions of appointment and fees payable to them shall be prescribed under the Rules.

(3) (a) For selecting persons for appointment as arbitrators, the Government shall constitute a selection committee which shall consist of the following namely:-

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|-------|--|-----------|
| (i) | Minister in charge of the Department of Co-operative Societies | -Chairman |
| (ii) | One elected member of the Delhi Legislative Assembly | -Member |
| (iii) | Secretary (Co-operation) to the Government | - Member |
| (iv) | Secretary (Law and Justice) to the Government | -Member |
| (v) | Registrar of Co-operative Societies | -Member |

(b) All decisions of the selection committee shall be taken by majority.

(4) The Registrar may withdraw any reference under clause (b) of sub-section (1) or referred under clause (c) of sub-section (1) and decide it himself or refer the same to another arbitrator for decision.

(5) The Registrar or any other arbitrator to whom a dispute is referred for decision under this section may, pending the decision of the dispute make such interlocutory orders as he may deem necessary in the interest of justice.]

7. It is argued by learned counsel for the petitioner that the settlement of disputes which are envisaged under Section 83 read with Section 74(m) of the said Act are the disputes between the owner of a flat in a cooperative society and his tenant of the flat in a cooperative society. In my opinion, this argument is wholly misconceived and if accepted would amount to a perversion of the language of Section 83 of the Act and which is basically for

determination of disputes between the society and the members and a person who claims through a member and the society pertaining to the rents which the members have to pay to the society or the maintenance charges or the other dues which the member has to pay and other disputes which are also the subject matter of Section 70. Surely by no stretch of an imagination the provisions of sub-section (1) and (2) of Section 83 can be read as if it pertains to disputes between the owner of a flat in a cooperative society and his tenant who is sought to be evicted from such flat. Once Section 83 does not come into play, then neither Section 74 (m) and nor Section 132 come into play.

8. A Division Bench of the three Judges of the Supreme Court in the case of **Salem Advocate Bar Association v. Union of India (2005) 6 SCC 344** in para 37 has held that it is high time that actual costs should be imposed for litigation. Discretion is also granted to this Court to provide actual costs by virtue of Volume V of Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15. Considering the wholly baseless nature of this petition, and whose sole object is to cause harassment to the respondent/landlord, I dismiss the present petition with actual costs and which shall be the fees which have been paid by the respondent/landlord to its counsels for the present petition. The respondents/landlords should file an affidavit giving the particulars of the payments which have been paid to their counsel for the present petition,

along with the certificate of the counsel for taking of such fees, within a period of two weeks from today, and such costs shall be the costs for the present petition. The respondent shall be entitled to recover costs imposed, if not paid within six weeks from today, in appropriate proceedings.

Petition is accordingly disposed of.

MAY 18, 2011
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VALMIKI J. MEHTA, J.