

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

+ **W.P.(C) 2934/2014**

Date of Decision : 7th December, 2015

BRIJESH SINGH

..... Petitioner

Through : Mr. Ravindra Kumar, Advocate.

versus

**BHAI MATI DASS CO-OPERATIVE URBAN, T & C SOCIETY,
LTD.**

..... Respondent

Through : Mr. Pawan K. Bakshi, Advocate.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

GITA MITTAL, J

1. We have heard the learned counsels for the parties. The petitioner has assailed an award dated 27th August, 2008 passed in arbitration case No. 659/AR/ARB/08-09 passed by Sh. Krishan Sethi, the arbitrator nominated by the Registrar of Cooperative Societies as well as order dated 8th January, 2014 passed in appeal No. 49/2011/DCT by the Delhi Cooperative Tribunal upholding the arbitration award dated 27th August, 2008.

2. The facts giving rise to the present writ petition are within a narrow compass. Premised on the contention of respondent that the petitioner has failed to repay the loan amount of Rs.1,00,000/- (Rupees One Lac) taken by him, the respondent herein invoked arbitration under Section 71 of the Delhi Cooperative Societies Act, 2003. A reference of the dispute was made by

the Registrar of Cooperative Societies appointing Sh. Krishan Sethi as an arbitrator, who made an ex-parte award dated 27th August, 2008 accepting the claim of the respondent-society. The arbitrator thereby held that the following amount was due and payable by the petitioner:-

<u>Particulars</u>	<u>Amount</u>
Principal	98300.00
Int & Penal Interest Up to 08.08.2008	33473.00
Arbitration Cost as on Dt. 28.02.2008	13802.00
Total	145575.00

Future interest @ 15.6% per annum plus penal interest with effect from 9th August, 2008 compounded monthly till realization of the entire loan amount was also awarded in the arbitration award dated 27th August, 2008.

3. The petitioner has contended that he was never served with any notice from the arbitrator and in these circumstances, the exparte award was unwarranted. The petitioner states that he came to know about the passing of the arbitration award dated 27th August, 2008, when a notice under Rule 132 of the Delhi Cooperative Societies Rules 2007 dated 7th October, 2010 was served in the petitioner's office whereby, the salary of the petitioner to the extent of Rs.1,43,298/- (Rupees One Lac Forty Three Thousand Two Hundred Ninety Eight) was directed to be attached by way of monthly instalments of Rs.8,000/- per month.

4. The challenge to the attachment by way of statutory appeal before the

Delhi Cooperative Tribunal was rejected by the impugned order dated 8th January, 2014. The primary ground of the challenge to the arbitration award dated 27th August, 2008 again was that no notice was ever served on the petitioner. It is submitted by learned counsel for the petitioner that at the time of applying for the loan, as per the application form relied upon by the respondent, the petitioner had disclosed two addresses. The first one was his then residential address at the Railway Colony in New Delhi and the second was his official address. It is submitted that the petitioner had changed his residence and was occupying his own house in Faridabad as per the memo of parties and affidavit also, while his office remained the same. It is further urged that on 30th June, 2012, the petitioner superannuated from his office.

5. Learned counsel for the respondent submits that the petitioner having disclosed two addresses, it was open to the respondents to issue notice at any of the two addresses. It is further submitted that the petitioner never informed the respondent about the change of his residential address to Faridabad and therefore, the respondent cannot be faulted for having sent the notice to the address which was the residential address disclosed by the petitioner.

6. We have heard learned counsels for the parties and perused the records before us. The application form of the petitioner does disclose two addresses of the petitioner and therefore, the action of the respondent of sending the notice at the address disclosed by the petitioner cannot be faulted. The responsibility to disclose the change of address lay on the petitioner who was bound to have disclosed the change of his address to the respondent-society, if he was desirous that notices should be sent to such address.

7. However, the issue which arises is not as to whether the respondents were justified in sending the notices to the address to which they were sent. What is essential is whether the record discloses that the notices issued by the respondent have actually been served on the petitioner. In the instant case, it was not so.

8. We have carefully scrutinized the arbitral award dated 27th August, 2008. A perusal of the award shows that the learned Arbitrator has observed that notice has been sent by registered post for appearance of the present petitioner on 8th August, 2008, however, the petitioner remained unrepresented. The award also notes that the notices were sent to respondents (petitioner herein) by registered post, further for the date fixed on 23rd August, 2008, and again, there was no appearance for the respondent. We find that without ensuring as to whether the notices were actually served upon the respondent or that the respondent was absenting from the proceeding despite service of notice, the learned arbitrator proceeded ex-parte. The ex-parte proceedings could not have been directed merely on issuance of the notice by registered post. There is nothing on record to enable the arbitrator to draw presumption of service of the notice in accordance with the General Clauses Act, 1897 and the Indian Evidence Act, 1872.

9. A grievance is made that the official address of the petitioner was also available with the respondents as it had not been possible to serve the petitioner at his residential address, and therefore, the respondents were bound to issue notice at his official address. This was also not done.

10. For the same reason, the Delhi Cooperative Tribunal has erred in rejecting the challenge by the petitioner to the appeal dated 8th January, 2014

after observing that the award had been passed ex-parte. The petitioner was entitled to a reasonable and fair opportunity to contest the claim of the respondent. Even if, it could be held that the petitioner had admitted to taking of loan, however, the petitioner was entitled to an opportunity to prove his plea that he had made the re-payment of amounts to the society. We are informed that the petitioner claims payment of Rs.1,13,000/- to the respondent-society which is disputed by the respondent. This was a fact which the petitioner was entitled to prove in the proceedings before the arbitrator. Further, given the fact that the respondent is claiming a large amount towards compound interest and penal interest, the petitioner before us has disputed entitlement of the respondent to the exorbitant claim of interest as well as basis on which it is being claimed. The petitioner ought to have given the opportunity to place his defence and challenge before the learned arbitrator. The petitioner was deprived of the opportunity to do so by the ex parte proceedings by the arbitrator. Without grant of such opportunity, the Tribunal had rejected the contention of the petitioner and concluded that he had no defence to challenge the award. This is not permissible in law.

11. In view of above, we are of the view that the award passed by the arbitrator dated 27th August, 2008 and the order of the Delhi Cooperative Tribunal dated 8th January, 2014 are contrary to law and have to be set aside. However, the interest of justice and equity merit that the petitioner be called upon to make the deposit of some amount with the respondent-society without prejudice to his rights and contentions.

12. In view of above, we direct as follows:-

- (i) The award dated 27th August, 2008 passed by the arbitrator,

order dated 8th January, 2014 passed by Delhi Cooperative Tribunal and the warrant of attachment dated 7th October, 2010 are hereby set aside and quashed.

- (ii) The petitioner shall file his defence/reply before the arbitrator within a period of four weeks from today.
- (iii) The respondent may file rejoinder thereto before the next date of hearing. The parties shall appear before the arbitrator on 16th December, 2015 for further proceedings.

In case, Sh. Krishan Sethi, who was appointed arbitrator in case No. 659/AR/R/08-09 is not available to conduct the arbitration proceedings, a direction is issued to the Registrar of Cooperative Societies to appoint an arbitrator afresh within a period of four weeks from today and inform the parties about the same. In such an eventuality, the parties may file pleadings in terms of our order with the office of Registrar of Cooperative Societies in the arbitration case noted above, who shall place the same before the Arbitrator.

- (iv) The new arbitrator, who is appointed would be required to issue a notice to both the parties in accordance with law and to ensure service thereof before proceeding in the matter.
- (v) All notices on the petitioner shall be served at the address disclosed in the writ petition which, we are informed by learned counsel is the permanent address of the petitioner.
- (vi) The petitioner shall deposit an amount of Rs.50,000/- with the respondent-society within a period of four weeks from today without prejudice to his rights and contentions. Learned counsel

for the respondent submits that the petitioner had also deposited Rs.40,000/- pursuant to the orders of Delhi Cooperative Tribunal. These payments shall be subject to adjustment which may be effected after final adjudication of the claim of the society. In case, the arbitration proceedings culminate in an order favourable to the petitioner, needless to say that the respondent-society would be liable to refund the sum with interest as is found appropriate.

13. The writ petition is allowed in the above terms.

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**GITA MITTAL
(JUDGE)**

**I.S.MEHTA
(JUDGE)**

DECEMBER 07, 2015

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