

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

+ **W.P.(C) 7186/2013**

% **Date of decision : 28th September, 2015**

RATHINDRA PRASAD LAHIRI AND ANR Petitioner

Through: Mr. A.K. Panigrahi, Adv.

versus

**TECHNOLOGY CO-OPERATIVE GROUP HOISING SOCIETY
LIMITED** Respondent

Through: Mr. Sanjoy Kr. Ghose, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

Judgment (Oral)

Gita Mittal, J

1. The petitioner assails an order dated 7th June, 2013 passed by the Delhi Cooperative Tribunal dismissing his Review Application No. 12/2013.
2. The facts giving rise to the instant petition are within a narrow compass. It appears that certain charges were raised upon the petitioner for his appropriation of a staircase leading to his flat. This staircase appears to be off the main staircase and enables access to the flat of the petitioner.
3. The respondent contends that the petitioner has not paid the cost of this staircase to the society. In view of the non-payment of the

amount by the petitioner despite the appropriation of the staircase to his exclusive use, the society made a claim under Section 70 of the Delhi Cooperative Societies Act, 2003. Additionally, the society submits that it had sought eviction of the petitioner from the flat in question on account of non-payment of lawfully demanded dues.

4. The Deputy Registrar passed an order dated 4th June, 2012 appointing an Arbitrator and making reference of the society's claim to arbitration. The petitioner sought a review thereof under Section 115 of the DCS Act, 2003. The review was also rejected by the RCS by an order dated 22nd November, 2012.

5. Still not satisfied, the petitioner assailed the mere reference of the society's disputes by way of an appeal before the Delhi Cooperative Tribunal which came to be dismissed by the order dated 26th April, 2013. The matter did not end here. The petitioner now filed a review of the order dated 26th April, 2013 before the Tribunal which came to be rejected by the order dated 7th June, 2013. The petitioner has filed the instant writ petition challenging the orders of the Tribunal dated 26th April, 2013 and 7th June, 2013.

6. Before us, Mr. A.K. Panigrahi, learned counsel for the petitioner contends that all issues between the petitioner and the society stand resolved by virtue of an order dated 1st August, 2002 passed in Writ Petition No. 6937/1999. It is his contention that the final cost of the flat including the cost of the staircase was examined by the court in this writ petition which culminated in the said order of 1st August, 2002

deciding the matter “*once for all*”. We however find that there is nothing in the order which would suggest that the cost of the staircase was placed before this court (in W.P.No.6937/1999) as part of the cost of the flat and considered in the final outcome thereof. Furthermore, there is no adjudication at all for the reason that the court notes that the order resulted on account of “*reconciliatory efforts*” by the court.

Therefore, so far as the claim of the society for payment of the cost of the staircase is concerned, there is no adjudication thereof.

7. Learned counsel for the society contends that all other members of the society have paid the claimed charges for appropriation of the property to exclusive use and control.

8. Be that as it may, an order merely referring a dispute raised by the respondent certainly cannot be the subject matter of such a challenge. It needs no elaboration that even a plea of accord and satisfaction is required to be placed before the Arbitrator. Therefore, reference of the dispute at the instance of the respondent cannot be assailed.

9. For all these reasons, we find no merit in this writ petition which is hereby dismissed.

10. We were inclined to impose costs on the petitioner given the nature of the challenge made in the present case. More litigation has been generated by the petitioner from his challenge to an order merely referring the society’s claim to the arbitrator. The petitioner could have placed all his assertions in the arbitration, including his reliance on

proceedings in W.P.No. 6937/1999. However, learned counsel for the petitioner contends that the petitioner is a senior citizen and costs may not be imposed. For this reason, we are refraining from imposing costs in this matter.

11. The parties shall appear before the Arbitrator appointed by the order dated 4th June, 2002 for directions on 29th October, 2015.

GITA MITTAL, J

I.S.MEHTA, J

SEPTEMBER 28, 2015

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