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

\+ **W.P.(C) 7408/2015 & CM No. 13658/2015**

% **Date of decision : 30th September, 2015**

DHARAMVIR ..... Petitioner

Through: Mr. Anil Kumar, Adv.

versus

THE JAIN COOPERATIVE BANK LTD. AND ANR. ..... Respondent

Through: Mr. Gautam Singhal, Adv. for R-1
Mr. Satyakam, SC with
Mr. Nikhil Bhardwaj, Adv. for R-2

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

Judgment (Oral)

Gita Mittal, J

1. A typing error is pointed out in our order dated 7th August, 2015. Instead of the amount read as Rs.15,000/- as recorded in para 5, the amount should correctly read as Rs.50,000/-. It is so directed.

2. By way of the instant writ petition, the petitioner has prayed for grant of benefit which was given to ***Kamlesh Jain*** who had filed a writ petition in this court which came to be granted by the judgment reported at ***2007 (142) DLT 782*** in the case entitled ***Kamlesh Jain v. Jain Cooperative Bank Ltd.***

3. The judgment of the court rested on a resolution of the Board of

Directors of the respondent no. 1-society dated 20th July, 2007, relevant extract whereof reads thus :-

> "That those members against whom the awards have been passed and if they wish to settle their account they may apply after depositing 1/3 award amount their cases may be compromised with regard to past award interest 10.50% to 12.00% and pay the balance amount in two instalments.
>
> 1. In the cases of unsecured loans awarded amount upto Rs.50000.00. Cases can be compromised on post awarded interest @10.50% and 50% of the cost awarded. The total awarded amount with 10.50% after the award and 50% of the Arbitration cost will have to be paid in 2 monthly instalments. If the award is not paid in two monthly instalments, the amount in full as per the award will be recovered.
> 2. In the cases of unsecured loans awarded amount above Rs.50000.00. Cases can be compromised on post awarded interest @11.00% and 50% of the cost awarded other conditions will be same as per point no.1.
> 3. In the cases of mortgaged loan and Cash Credit Limit Account cases in which award have been passed. Cases can be compromised on post awarded interest @12.00% and 50% of the cost awarded other conditions will be same as per point no.1.
>
> All the above decisions will be implemented after the permission of the Registrar Cooperative Societies. Apart from the above the judgment debtors will also have to pay 5% as recovery commission payable by the Bank in execution cases to the Registrar. If, not exempted by the Hon'ble Court."

4. The court noted the consensus between the parties resulting in the following directions in ***Kamlesh Jain's*** case :-

> "(ii) Bank considering the peculiar facts and individual circumstances of the case, would take into account the hardship or other relevant factors, and consider granting relief in the post award interest by confining it to 10.5% to 12%. The post award interest would be payable in three monthly instalments."

5. The petitioner has drawn our attention to the award dated 30th November, 2012 passed against him in proceedings initiated by the respondent no. 1 under Section 71 of the Delhi Cooperative Societies Act, 2003. Under this award, the petitioner was held liable for payment of a sum of Rs.95,850/- with interest at the rate of 18%+2% per annum (monthly compounded) with effect from 1st April, 2012 till realisation.

6. Mr. Gautam Singhal, learned counsel appearing for the respondent no. 1 submits that the Bank has no objection to the grant of the benefit of post award interest to the present petitioner on the terms on which it was granted to ***Kamlesh Jain***.

7. Keeping in view the award amount of Rs.95,000/-, the petitioner would be liable to pay interest and costs in terms of para 2 of the resolution dated 20th July, 2007 and in terms of para 10 of the order in ***Kamlesh Jain***. The petitioner would thus be liable to pay post award interest at the rate of 11% in terms of para 2 of the resolution. So far as costs are concerned, the respondent bank would be entitled to the actual costs subject to a maximum of Rs.5,000/-

8. In as much as execution has not fructified in this case as well, the 5% commission amount payable by the bank to the Registrar of

Cooperative Societies would not be applicable or attracted.

9. The Registrar of Cooperative Societies shall take expeditious action, if requests for approval of settlement are received from the respondent no.1-Bank.

The writ petition is allowed in the above terms.

CM No.13568/2015

10. In view of the order passed in the writ petition, this application does not survive for adjudication and is disposed of accordingly.

Dasti to parties.

GITA MITTAL, J

I.S.MEHTA, J

SEPTEMBER 30, 2015

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