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

+ **W.P.(C) 484/2014**

**ASHA MISHRA**

..... Petitioner

Through: **Mr.Ravi Shankar Kumar and Ms.Jyoti  
Kumar Goyal, Advocates**

versus

**GOVT. OF NCT OF DELHI & ORS.**

..... Respondents

Through: **Mr.Amit Singh, Adv. for R-1 to R-3  
along Mr.Ravi, (RCS)  
Mr.Kailash Chandra, Adv. for R-4.  
Ms.Risha Mittal, Adv. for R-5.**

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**ORDER**

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**25.01.2016**

**W.P.(C) 484/2014 & C.M.No.946/2014**

1. The petitioner's grievance is that the Demand Notice dated 01.01.2012 and the Special Audit Report dated 28.01.2012, which were made after directions were given by this Court in W.P.(C) No.6934/2007 dated 18.04.2011, are illegal and excessive.

2. It is submitted that even before the flats was handed over the society started claiming maintenance charges. Counsel urged that the amounts towards interest claimed and recovered are based upon a rate which was not approved by the society as required by the provisions of the Delhi Cooperative Societies Act and directives issued thereunder. It is further submitted that the society made no efforts to recover amounts which it was entitled to from its previous Managing

Committee's members and in these circumstances although the petitioner has deposited amounts under protest and obtained possession the demands have to be set aside as excessive.

3. This Court notices that the petitioner had first invoked arbitration proceedings which culminated in a favourable award. The award was subsequently set aside by the Tribunal. However, the Tribunal's decision was upset by this Court in the earlier writ petition. In the course of its decision, the Court had observed that a separate special audit had to be conducted and that amounts as determined by the Special Auditor were payable by the petitioner. The Court was conscious of the fact that the delay which occurred had led to a complication in the sense that different categories of flats were charged at different rates having regard to the time elapsed. Nevertheless, the Court was clear that the petitioner would be liable to pay a cost of the flat with interest as fixed by the special auditor. Now the special auditor's report is a matter of the record; based upon it the society has made further demands.

4. Having regard to the conspectus of circumstances and given that the primary jurisdiction to adjudicate upon the nature of dispute urged is that of the arbitrator, this Court is of the opinion that the petitioner should exhaust its remedy by making such claims towards payment (towards principal or excess interest charged) and also urge whatever he wishes to in support of his claims including the question of alleged non-recovery of amounts from the erstwhile Managing Committee members before the Registrar. The Registrar shall either decide those disputes under Section 70/71 of the Delhi Cooperative

Societies Act or refer them to an Arbitrator. In either case, an intimation to the petitioner shall be made within three weeks of his filing a demand/claim for arbitration in that regard.

5. The writ petition and pending application is disposed of in the above terms.

**S. RAVINDRA BHAT, J**

**DEEPA SHARMA, J**

**JANUARY 25, 2016**

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