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

+ W.P.(C) 1059/2014 and CM No. 2185/2014

P.PERIYASAMY

..... Petitioner

Through: Mr Akhleshwar Jha, Adv.

versus

THE HONY SECRETARY JWALA COOPERATIVE URBAN
THRIFT/CREDIT SOCIETY LTD. & ORS

..... Respondent

Through: Ms Latika Chaoudhary, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **28.04.2016**

The petitioner's grievance is that the first respondent—Jwala Cooperative Urban Thrift/Credit Society Ltd. seeks to enforce an award—dated 09.11.2009 declaring him liable to the extent of Rs.2,61,523/- as a guarantor/surety of one Ramesh Chander, Son of Banwari Lal. The said Ramesh Chander was the principal debtor who had borrowed the amount from the Society. The petitioner contends that an *ex parte* award was made against the principal debtor even though the Arbitrator was apprised of the fact that he had died.

The Society had entered appearance in this case and not chosen to file counter-affidavit. The second respondent, i.e., Delhi Transport Corporation (DTC) supports the petitioner's contention. During the

course of the proceedings as well on 03.11.2014, the Court had noted statement of Senior Manager of the Syndicate Bank that no amount was paid as pension or otherwise to late Ramesh Chander.

The award facially shows that Ramesh Chander was not represented; even the petitioner and the other guarantor indicated that perhaps Ramesh Chander, the principal guarantor had died as is evident from the following extract:-

“Shri Ramesh Chander the Pr. Debtor did not appear on both the dates. Sh. P. Periyasamy & Sh. Bijender Singh respondent No. 2&3 appeared on both the dates and submitted that perhaps Shri Ramesh Chander has expired and they don't know the whereabouts of him. Shri Virender Gupta the authorized representative of the claimant Society appeared. He filed authority letter in his favour along with latest statement of outstanding dues from the respondents.”

The petitioner has placed on record the certificate of the New Delhi Municipal Corporation dated 27.02.2009 stating that Ramesh Chander, S/o Banwari Lal, the principal guarantor had died on 01.02.2009. It is quite clear, therefore, that on the date of the award Ramesh Chander was not alive. Plainly, the award was a nullity; the respondent-society could have proceeded against and recovered the dues only by impleading his legal representative along with the guarantors. Since this course was not adopted, the award is unsustainable in law. It is hereby quashed.

During the pendency of the proceedings, the DTC was directed to remit Rs.25,000/- to the Society. The Society shall ensure that the said amount is repaid with interest to the petitioner @ 8% per annum

till date of payment.

The petitioner and the respondents shall be present before the Assistant Collector, Office of Registration of Cooperative Society, Old Building, Parliament Street, New Delhi on 23.05.2016 to ensure compliance. The Registry is directed to send the copy of this order to the respondent directly without process to ensure compliance by the parties.

The writ petition is allowed in the above terms.

Order *Dasti*.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

APRIL 28, 2016

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