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

\+ W.P. (C) 1446/2015, CM APPL.2539 & 12784/2015

HUKAM KAUR ..... Petitioner

Through: Mr. Rajeeve Saxena with Ms. Mehak Tanwar, Advocates.

versus

THE SUNRISE COOPERATIVE GROUP HOUSING SOCIETY LTD. ..... Respondents

Through: Mr. Pranav Kr. Jha, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **03.03.2016**

The petitioner is aggrieved by the concurrent orders of the Registrar and the Delhi Cooperative Tribunal which have held her liable on account of amounts due from Late Khajan Singh, her deceased husband who was the President of the respondent Society during the period 2001-08. Apparently, a special audit was directed due to certain amounts and deficiencies noticed in the accounts maintained by the Managing Committee of the respondent Society during the time he held the position of President. In the course of these proceedings, it was *inter alia*, noticed that Rs.55,368/- was refunded to him. This forms the basis of the Special Audit Report which states that the said amount which is principally the substantial amount of the controversy was due and payable. The final amount determined was Rs.4,30,579/- on account of interest liability for subsequent periods which also was compounded.

The petitioner had relied upon the demand draft/pay order No.026726 dated 15.02.2001, a copy of which has been produced on the record. The concerned Bank, i.e., Bank of India has also certified on 04.10.2015 that the said demand draft/pay order was debited from late Khajan Singh's savings account with its Vikas Puri branch. Furthermore, the petitioner had relied upon the receipt issued by the Delhi Cooperative Housing Finance Corporation Ltd. in respect of the said amount of Rs.55,368/- paid by demand draft/pay order No.026726.

Having regard to these circumstances, it is apparent that the only basis for the conclusion of the Registrar and the Tribunal (which relied upon the Special Audit Report) is from the letter dated 25.11.2005 which mentions that the sum of Rs.55,368/- was refunded "by the Society by demand draft/pay order no.026726". Obviously this reference to the demand draft/pay order bearing the same number is erroneous - besides the amounts and the number on the instrument 026726 as well as the date, i.e., 15.02.2001 is also identical with the demand draft/pay order issued by the Bank of India.

Having regard to these facts, the Court is of the opinion that there is clear error in appreciation of the circumstances as to the very liability of the petitioner. The impugned order as well as the Award of the Registrar are hereby set aside. The matter is remitted for fresh consideration to the Registrar who shall take into account not merely the Special Audit Report but also the primary documents to decide if and to what extent in fact refund was made to Late Khajan Singh from the society's account. Necessarily, such primary documents would include the bank account statements of the society to show debits if any for particular amounts that were paid over to Late Khajan Singh.

W.P. (C) 1446/2015 is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 03, 2016
/vikas/