

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3090/2015, C.M. NO.5528/2015**

MS MORVEENA MASSEY Petitioner
Through : Ms. Neha Kapoor, Advocate.

versus

PANCHDEEP COOP G.H SOCIETY LTD. & ORS..... Respondents
Through : Sh. J.N. Gupta, Advocate, for
Respondent No.1.
Ms. Misha Rohatgi, Advocate, for Respondent
No.2.

CORAM:

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

ORDER
% **20.01.2016**

The petitioner is aggrieved by the order of the Delhi Cooperative Tribunal [hereafter “the Tribunal”], dismissing her appeal. The appeal was directed against an Award made on 14.04.2004 against the petitioner’s mother, who has since died.

The facts of the case are that the petitioner’s late mother – late Mrs. Mariam. Y. Massey was a member of the respondent Society. The Society currently claims certain outstanding amounts, being ₹1,24,657/- on account of the liabilities of the members to the Delhi Cooperative Housing Finance Corporation Ltd. (DCHFC). The Arbitrator, by an Award adjudged that a sum of ₹1,27,078/- was payable by the petitioner’s mother. The petitioner was directed to pay simple interest @ 18% + 3% penal interest, i.e. 18.54% on the amount

outstanding with effect from 01.04.2004. The petitioner's mother expired on 25.11.2011. In these circumstances, when she approached for transfer of the property in her name, the Society claimed an outstanding amount of ₹3,69,553/-. The petitioner disputed this amount through letters dated 07.11.2012 and 18.12.2012 and followed it up by depositing certain receipts of payment made towards the flat. The matter continued in this fashion. Ultimately, the petitioner obtained certified copy of the arbitration proceeding, including the Award on 30.12.2014 and appealed to the Tribunal which, by the impugned order, dismissed it.

It is contended by the petitioner that the liabilities fastened through the Award are not genuine and that according to the available records, all outstanding amounts were in fact paid. Learned counsel for the petitioner firstly emphasized that on account of the long inaction of the Society towards enforcement of its so-called liabilities, there is considerable doubt about the genuineness of the amounts claimed by it. Contending that her mother never attended the arbitration proceedings, the petitioner submits that the Society is seeking to benefit from the fraudulent transaction. Reliance was also placed upon a copy of the Will which was produced with the copy of the writ petition.

The Court has considered the submissions. Whilst there is no doubt that the Tribunal dismissed the appeal primarily on the ground that it was highly belated, the petitioner's attempt is to show that even some submissions on merits were taken into account. The Tribunal, in the impugned order, did discuss the submission that the Award could

have been the result of some irregularity. However, that itself *ipso facto* in the opinion of the Court, does not mean that the final order was made on the finding as to whether in fact fraud was played on her or not. The mainstay of the petitioner's submission that her mother was indeed not liable is the fact that she is in possession of several receipts which clearly evidence that no payments were due and that the documents said to be executed by her mother contain doubtful signatures.

The Court is of the opinion first, that the mere circumstance that the Society did not choose to enforce the liabilities or dues against its member itself cannot by itself be determinative of the issue of genuineness of the liability. The Award dated 14.04.2004 does record that the petitioner's mother had presented herself. In fact, copy of the proceedings has been produced on the record.

In the face of these circumstances, after this length of time, i.e. after 12 years, it is well impossible for this Court while exercising its powers under Article 226 of the Constitution, to adjudicate whether the documents relied upon were genuine and whether the signatures of the petitioner's late mother were in fact forged or not. That is left best to the determination of the Civil Court. As things stand, the fact remains that the liabilities have crystallized by virtue of the Award. We see no reason to interfere with the order of the Tribunal which dismissed it on the point of delay. This Court, however, clarifies that in case the petitioner seeks to exercise any remedies towards securing a declaration or appropriate relief with respect to the disputed document, this order shall not preclude her provided she does that in

accordance with law. The period of limitation for availing of such remedy shall be calculated from the date the petitioner obtained certified copies of the Award, i.e. 30.12.2014. The writ petition is disposed of in the above terms.

Order dasti.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 20, 2016

ájk