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

+ **W.P.(C) 5150/2014 & CM No. 10269/2014**

VIJAY SINGHAL

..... Petitioner

Through: Mr. Kirti Uppal, Advocate
alongwith Mr. Sitab Ali
Chaudhary and Mr. Sidharth
Chopra, Advocates.

versus

DELHI STATE CO-OPERATIVE BANK LTD Respondent

Through: Mr. S.K. Kaushik, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **17.03.2016**

The petitioner is aggrieved by an order of the Delhi Cooperative Tribunal whereby his appeal was rejected. He was arrayed as the respondent in a claim by the Cooperative Society/ respondent bank of which he was a member. The bank had claimed that the petitioner had availed a loan of Rs. 80,000/- and that he had never repaid it. The petitioner's argument before arbitration was that post-dated cheques were deposited but apparently not encashed. The Arbitrator rejected the statements and ruled against the petitioner; the Tribunal rejected his appeal. It is argued that the bank could not have sought recourse to Arbitration in 2011, given that the loan was taken in 1998. It is emphasised that at best the amount could have been recovered not later than 2004-2005 and the Tribunal fell into error in not considering it and also on its findings in respect of Section 17(4) (a) of the Delhi

Cooperative Societies Act 2003.

It is also argued in addition, that the petitioner was merely a nominal member and not a regular member having rights and under the circumstance, the alleged extended period of limitation was inapplicable to him.

Section 2(r) of the Act defines a member as follows:-

(r) "member" means a person joining in the application for the registration of a cooperative society and a person admitted to membership after such registration in accordance with this Act, the rules and the bye-laws, and includes a nominal or associate or joint member and the Government when it subscribes to the share capital of a co-operative society".

Section 70 (4) provides for periods of limitation in respect of disputes between members and Cooperative Societies. It states *interalia* as follows:-

70.(4) (a) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under sub-section (1) shall -
(i) when the dispute relates to the recovery of any sum including interest thereon due to a co-operative society by a member thereof, be computed from the date on which such member dies or ceases to be member of the co-operative society, be three years;
(ii) save as otherwise provided in sub-clause (iii), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), be six years from the date on which the act or omission with reference to which the dispute arose or took place;

(iii) when the disputes relates to a co-operative society which has been ordered to be wound up under section 95 or section 96 or section 97 or in respect of which an administrator has been appointed under section 37, be six years from the date of the order issued under section 95 or section 96 or section 97 or section 37, as the case may be; and

(iv) when the dispute is in respect of an election of an officer of a co-operative society be thirty days from the date of the declaration of the result of the election.

(b) The period of limitation in the case of any other dispute except those mentioned in the foregoing clause which are required to be referred to the Registrar shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute was a suit and the Registrar a civil court.

(c) Notwithstanding anything contained in clauses (a) and (b), the Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired”.

As would be evident, the provision begins with a *non-obstante* clause. It is meant to and actually overrides the provisions of the Limitation Act. Therefore, the petitioner’s submission that the period of limitation stipulated in a general law, is *per se* unacceptable. The Parliament, in this case, provided for a special period of limitation. The Act makes no distinction between different classes of members-whether they are joint, associate or nominal. All are treated as “members” - atleast for calculating the period of limitation

(refer Section 2(r) and Section 70 (4) (a)). In other words, the meaning of the term “member” has to be construed for the purpose of limitation in accordance with the definition clause. Even otherwise it is one of the settled rules of statutory interpretation that if a particular enactment refers to a defined expression, unless the context otherwise expressly so provides, that definition would pervade and apply in its entirety to this statute.

In view of the above analysis, it is inescapable that the provisions of the Limitation Act are over-ridden to the extent that in the *interse* dispute concerning recovery of money/amounts by Cooperative Societies from its members (regardless of the clause of their membership rights), there is no period of limitation; such “period of limitation” would commence only in the stated eventualities i.e. death or cessation of membership. There seems to be a sound public policy consideration behind this “extended period”; Parliament perhaps intended that there should be a general presumption that so long as membership of a Cooperative Society exists, there is relationship between the Society and the member and that such presumption would entitle the Society to raise the dispute at any point of time.

The Court is of the opinion that the petitioner’s submissions therefore are unfounded in law. In the present case, the petitioner had urged that he had paid amounts through post-dated cheques. Apparently, he was unable to substantiate these through receipts or statements of accounts or copies thereof in the course of arbitration proceedings. In any event, those are finding of facts that have

attained finality. During the course of these proceedings, the petitioner was directed to deposit some amount; he deposited Rs. 67,000/- with the Registrar of the Cooperative Society. It is open to the Executing Authority/Assistant Collector to suitably appropriate the amount towards outstanding dues.

Any further issues concerning calculations are left open to be decided/ determined by the Assistant Collector.

The writ petition is dismissed but subject to the above observations.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 17, 2016

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