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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 6077/2014 & CM 14784/2014
URMIL BATRA

..... Petitioner

Through Mr Kunal Kalra, Adv. alongwith petitioner
in person

versus

THE REGISTRAR COOP. SOCIETY & ORS

..... Respondent

Through Mr Rakesh Munial, Sr. Adv. with Ms
Gaurika Nanda, Adv. for RCS
Mr Santosh Kumar Tripathi, ASC for
GNCTD
Mr Sunil Sabharwal and Mr Chirag Babbar,
Adv. for R3 – DCHFC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% 25.07.2016

1. Ms. Urmil Batra, by this writ petition impugns the order dated 06.08.2014 passed by the Delhi Cooperative Tribunal, rejecting her appeal against the Award dated 24th July, 2004 as barred by limitation. The Tribunal has disbelieved that the petitioner was unaware of the Award dated 24th July, 2004, passed against her husband late R.P. Batra, and that she had first learnt about the Award in the first week of June, 2014. The petitioner claims that her son Sandeep Batra had earlier never informed her about the recovery proceedings before the Assistant Collector, she being an old lady suffering from old age ailments.

2. The impugned order dated 06.08.2014 passed by the Delhi Cooperative Tribunal, specially mentions and notices that late R.P. Batra, husband of the petitioner, and his son Sandeep Batra, had appeared before the Arbitrator. A cheque for Rs. 53,681/- given by late R.P. Batra was dishonoured as payment was stopped. Thereafter, the Award was made on 24.07. 2004 and a copy was sent to late R.P. Batra at 62, Panchsheel Apartment, Vikas Puri, Delhi. The certificate of posting dated 03.08.2004 was available, confirming that the Award was dispatched and sent to late R.P.Batra by post. The Tribunal records

that the Arbitrator would not have created a false certificate, merely to show that he had sent the copy of the Award. Further, the petitioner had not come to the Tribunal with clean hands as she had failed to explain the delay of 10 years.

3. The learned counsel for the petitioner has submitted that the petitioner was not aware of the Award and her husband, late R.P. Batra, had expired on 07.05.2006. She submits that the Award is factually wrong as the payments made by late R.P. Batra were not fully accounted.

4. Learned counsel for the respondent- Cooperative Society, submits that late R.P. Batra was aware of the Award. Post the award, he had made a payment of Rs.30,000/- towards interest, vide receipt dated 11.10.2004. Our attention is drawn to the letter dated 20.10.2011 written by the petitioner, Urmil Batra, requesting for up-to-date demand as per the Award by the Registrar, Cooperative Society regarding the Delhi Cooperative Housing and Financial Corporation (DCHFC) Loan EMI. The hand written letter dated 05.10.2012 signed by the petitioner and her son Sandeep Batra, also refers to the Award. Lastly, reference is made to the minutes of the Special General Body meeting held on 16.10.2011. The petitioner was shown as a defaulter, for the dues in terms of the Award were outstanding.

5. Referring to receipt dated 11.10.2004, learned counsel for the petitioner submits that the receipt does not bear the signatures of late R.P. Batra. The hand-written letter dated 05.10.2012, is in the hand writing of the Secretary and the signatures of the petitioner and her son have been fabricated. He submits that the petitioner has in her possession receipts of payments that have not been accounted for by the cooperative society.

6. We have considered the contention raised by the petitioner, but do not find any merit in the same.

7. Arbitration proceedings were initiated under Ss. 60 and 61 of the Delhi Cooperative Societies Act, 1972 and Late R.P. Batra was served and had attended the said proceedings. His son, Sandeep Batra, had also appeared in the said proceedings. This is mentioned and stated in the arbitration Award dated 24.07.2004. The arbitration Award refers to the proceedings held on 03.07.2004, when a copy of the claim petition

was served on Late R.P. Batra. On the next date, i.e. 10.07.2004, Late R.P. Batra had undertaken that he would deposit the total dues within three days as he had received the account reconciliation. This statement made by late R.P. Batra was also recorded in the order sheet, a copy of which has been produced before us by the petitioner. On 15.07.2004, the Cooperative Societies i.e. claimant, had stated that late R.P. Batra had given two cheques of Rs.53,681/- and Rs.3000/- towards claim dues. The cheque of Rs.3,000/- was honoured but the cheque of Rs.53,681/- was dishonoured.

8. Referring to the order-sheet dated 15.07.2004, the petitioner submits that the cheque of Rs.53,681/- was towards full and final settlement for the order sheet records that the said payment was towards the claim. We do not agree. The words 'towards dues' mentioned in the order-sheet would only reflect that dues were payable towards the claim, and that the payment was towards these dues. It would not reflect and show that the payment was towards full and final settlement. The Award dated 24th July, 2004 is similarly worded. The award quantifies the amount Rs.2,66,091/- due and payable by late R.P. Batra. It includes the principal amount of Rs. 13, 161 and Rs. 5,375/- [Rs. 5,000+ 7.5% interest) as arbitration costs. It is obvious that cheque payment of Rs. 53,681/- was not towards full and final settlement of account/claims.

9. The petitioner who has disputed the receipt dated 11.10.2004, has not disputed payment of Rs.30,000/- by late R.P. Batra. The payment was by way of cheque dated 06.10.2004 drawn on Bank of Maharashtra in favour of the DCHFC Limited. The petitioner has not produced any other receipt, executed when the cheque was handed over by late R.P. Batra for encashment.

10. The letter dated 20.10.2011 written by the petitioner to the President / Secretary of the Cooperative Societies is again not disputed. The subject, as mentioned in the said letter, reads as under:

“Sub: Request for up-to-date demand notice / as per award issued by R.C.S., regarding DCHFC Loan EMI, as well as other dues of the society i.e. upto 31.12.2011.”

11. The body of the said letter also refers to demand notice regarding DCHFC Loan EMI as well as the other dues of the Cooperative Society upto 31.12.2011. Thus clearly

reflecting and establishing that the petitioner was aware of the Award by the Registrar, Cooperative Societies.

12. We have considered the contention of the petitioner that she possesses several receipts which would show that substantial, if not the entire, payment was made. We believe that late R.P. Batra was fully conscious and was the best person to state the true and correct facts. He had presented himself before the Arbitrator as recorded in the order dated 09.07.2004. The order refers to late R.P. Batra's statement that he had made a receipt accounts reconciliation. On this basis and foundation the Award was passed. Reopening and re-examining the question of payments or reconciliation after a period of 10 years on mere *ipsi dixit* is unacceptable. This would result in reopening the entire case. Matters which have attained finality by way of an uncontested Award, cannot be reopened, and that too after a period of 10 years. Late R.P. Batra, it is apparent, had accepted the Award, for he did not file any appeal or writ petition.

13. It is submitted by the learned counsel for the petitioner that the payments made post the award have to be taken into account. It is open to the petitioner to produce the receipts of payments made post the award before the Recovery Officer. In case the petitioner is entitled to any reduction or benefit on the rate of interest in terms of the earlier decision or any scheme, she can raise the said contention before the Recovery Officer.

14. In these circumstances, we do not incline to interfere with the impugned order dated 06.08.2014 passed by the respondent no.2, and dismiss the present petition.

15. Pending CMs are also disposed of.

SANJIV KHANNA, J

SUNITA GUPTA, J

JULY 25, 2016/*rd*