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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (C) 4397/2015, CM APPL.7959/2015

NEW PROGRESSIVE COOPERATIVE GROUP Petitioner

Through: Mr. RajeshYadav with Mr. Abhinav
Agnihotri, Advocates.

versus

THE REGISTRAR, COOPERATIVE SOCIETIES & ANR.

..... Respondent

Through: Mr. J.N. Gupta, Advocate for Resp-2.
Ms. Astha Nigam, proxy for Mr. Naushad Ahmed
Khan, Advocate for Resp-1/RCS.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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28.03.2016

The writ petitioner, a cooperative society claims to be aggrieved by the initiation of execution proceedings by the respondent, a member (hereafter referred to as “claimant”) based upon the Arbitrator’s determination dated 16.12.2013.

The brief facts are that the claimant was admittedly a member of the petitioner society. Apparently, his membership was wrongly cancelled sometime in 1992. As a consequence, he was denied membership benefits including right to be considered for allotment of a flat. The claimant approached the society sometime in 2001 at which stage on account of lapse of five years, the society indicated

that it was willing to allot a flat provided he paid - in addition to the principal amount - interest of ₹6,39,642/-. This offer was made by a letter dated 05.07.2002. The claimant was willing to pay the principal amount but not the interest demanded; he, therefore, approached the Registrar under Section 60 of the Delhi Cooperative Societies Act, 1972 (hereafter referred to as 'old Act'). The Registrar by an order dated 31.05.2012 referred the matter to an Arbitrator "for report after examining all the materials and circumstances". This determination by the Arbitrator was rendered on 16.12.2013. The Arbitrator discussed elaborately the materials placed before him and in the ultimate analysis gave the recommendations. The claimant approached the Assistant Registrar contending that the decision of the Arbitrator was an Award. On the other hand, the writ petitioner cooperative society contended that the executing court had no jurisdiction because no Award had been made. This objection was rejected. Consequently, the cooperative society has approached this Court.

It is contended by Mr. Rajesh Yadav, learned counsel that the decision of the Arbitrator cannot be termed as an Award. Reliance was placed upon the initial order and reference by the Registrar which required that the Arbitrator ought to consider the circumstances and report back to the Registrar in order to facilitate the decision. It is contended that having regard to the totality of the circumstances especially that the claimant approached after nine years of delay, oral evidence was necessary. Reliance was placed upon Rule 89 of the Old Delhi Cooperative Societies Rules which corresponds to Rule 85

of the Rules framed under the new Act of 2007.

Counsel for the claimant/second respondent contends that what was referred in essence was a dispute; expressed allusion to the Arbitrator could only mean that the dispute has to be decided in accordance with the provisions of the Delhi Cooperative Societies Act. The further requirement of having to facilitate the decision by the Registrar merely means that upon the decision taken either by the Arbitrator or even by the Registrar (wherever there is no reference), further action under the Act has to be taken.

This Court has carefully considered the submissions. Although, Rule 89 appears to point to a mandatory requirement of permitting parties to lead evidence if they chose to, the facts and circumstances of this case do not point to any prejudice having ensued to the cooperative society by the Arbitrator declining to permit this liberty. This is for the reason that the claimant approached the Registrar after nine years which is not disputed. Whatever his explanation might have been, that fact alone could not have lead to the rejection of his claim given that the society - in its letter of 05.07.2002 agreed to allot flat to him provided he not only paid the principal amount but also the interest. In these circumstances, the justification or otherwise for demanding interest amount arose for consideration before the Arbitrator who appears to have given his decision. Having regard to these circumstances as well as the tenor of the determination by the Arbitrator - which culminated in his report/order dated 16.12.2013, we have no doubt that it is nothing but an Award; that Award is clearly appealable.

At this stage, learned counsel submits that the society may be permitted liberty to appeal against the said decision and Award of the Arbitrator dated 16.12.2013 in accordance with law, i.e., before the Delhi Cooperative Tribunal and that the Tribunal having regard to the pendency of these proceedings, may consider the appeal and decide on the merits thereof. We are of the opinion that since the present petition was pending all this while the petitioner society ought to be heard on the merits of the appeal if it chooses to be preferred before the Tribunal. Accordingly, liberty to approach the Delhi Cooperative Tribunal under Section 112 is granted provided the appeal is preferred within two weeks from today. The Tribunal is directed to hear the parties and decide such appeal on its merits, i.e., as to the correctness of the decision in the Award and not go into the question of limitation. All rights and contentions of the parties are expressly reserved. The proceedings in execution initiated by the claimant shall be kept in abeyance and shall be subject to the final decision of the Tribunal

The writ petition is partly allowed in the above circumstances.

Order dasti.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 28, 2016

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