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

\+ W.P.(C) 8997/2014 & CM No. 20551/2014

PREM SINGH ..... Petitioner

Through: Mr. Karan Sharma, Advocate alongwith Mr. Rohit Kaliyar, Advocate.

versus

MAA JHANDEWALI CO-OPERATIVE URBAN THRIFT & CREDIT SOCIETY LTD. & ORS. ..... Respondents

Through: Mr. Samen Khan, Advocate.
Mr. Sanjoy Ghose, ASC alongwith Mr. Yash S. Vijay, Advocate for R-2.

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

O R D E R

% **26.04.2016**

The petitioner is aggrieved by an order of the Recovery Officer, which sought to enforce the award dated 07.10.2014 under Section 71 of the Delhi Co-op Society Act, 2003.

According to the award, the petitioner was held liable as a surety/guarantor of the principal borrower, Munna to the extent of Rs. 1,47,475/-. In the course of execution, the petitioner’s salary was attached to the extent of Rs. 84,600/-.

It is contended that the petitioner himself had borrowed amounts which were fully repaid and were unknown to him; the respondent society obtained the signatures as a guarantor for Munna. Munna used to work in the South Delhi Municipal Corporation. Upon demise, his legal heir/son was provided compassionate appointment. In these circumstances, the proceeding in execution is unwarranted and has resulted in attachment of three months' salary. The respondent society, on the other hand, contends that the petitioner was present when the award was made and he was fully aware of his liability which he cannot now escape.

It is evident that the petitioner is aggrieved by the attachment in the course of the execution proceedings. His counsel contends that the petitioner was in the dark about the nature and extent of the liability or even that he was the guarantor of Munna. Having regard to these submissions, especially that Munna's son has now been provided alternative employment and furthermore that the petitioner was not given an opportunity to be heard for reasons unknown. This Court is of the opinion that in the interest of justice, the opportunity in that regard should be given. Court notice that during the pendency of these proceedings, the respondent society has been directed to refund the amounts attached and appropriated in satisfaction of the award; consequently Rs. 53,580/- was returned.

In the above circumstances, the petitioner is permitted to prefer an appeal before the Delhi Corporation Tribunal within four weeks. In such event, the Tribunal shall consider the appeal on its merit, without, in any manner, being or taking into account the delay occasioned in the filing of the appeal. Furthermore, no additional condition of depositing further amounts would be insisted upon. The liability of the petitioner would be subject to the final outcome before the Tribunal- this could include the amounts lying in deposit with the respondents (being the balance amount of Rs. 26,790/-). In other words, the disbursement of said amount, the entitlement of the petitioner as well as any further liability, if any, shall be based upon the final decision of the Tribunal.

The writ petition is disposed of in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

APRIL 26, 2016
sapna