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

+ EFA(OS) 32/2016

**ATAM VALLABH COOPERATIVE GROUP
HOUSING SOCIETY LTD**

..... Appellant

Represented by: Mr. Shyam Jindal, Advocate
with Ms. Madhu Goel,
Advocate

versus

M/S SUKUMAR CHAND JAIN

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER
06.12.2016

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CM No.45365/2016

Allowed subject to just exceptions.

CM No.45366/2016

For the reasons stated in the application 30 days delay in filing the appeal is condoned.

Application is allowed.

EFA(OS) 32/2016

1. The appeal is frivolous and merits dismissal in limine. The appellant is a Co-operative Group Housing Society and holds perpetual lease-hold rights in a plot of land bearing No.14, Sector-17, Rohini. 233 flats had to

be constructed for the members of the appellant and it appears that the previous contractor left the work incomplete resulting in the appellant executing an agreement on December 04, 1987 with the respondent, to act as a contractor, and complete the balance work. In said agreement the respondent is described as an employee and the appellant as the employer. But that would not mean that the relationship was that of a master-servant.

2. Disputes having arisen between the appellant and the respondent, the agreement having an arbitration clause, an arbitrator was appointed who rendered an award. With the appointment of the arbitrator a petition filed, registered as CS(OS) No.1960A/1995 for appointment of the arbitrator was dismissed as infructuous, and thus appellant's plea of res-judicata has rightly been held to be frivolous by the learned Single Judge.

3. Award dated December 17, 2009 rendered by the arbitrator was challenged both by the appellant and the respondent. The challenge failed. Appellate challenge also failed. The award is therefore to be executed.

4. The plea that the award was obtained by fraud inasmuch as a correct copy of the agreement between the parties was not filed is noted and rejected by us for the reason the appellant had ample opportunity before the arbitrator to urge said point. We find none urged. We find that while laying a challenge to the award no such issue was raised.

5. The plea that there was an employer-employee relationship and therefore the dispute had to be decided as per the Delhi Co-operative Societies Act, 1972 is noted and rejected for the reason it is not the label or description of parties which matters. It is the substance which matters. The agreement shows that the respondent was the contractor to complete balance works in 233 flats. No such objection was raised when the dispute was

referred to arbitration. Indeed, it could not have been raised.

6. The plea of res-judicata is premised on dismissal of CS(OS) No.1960A/1995, which was a petition under Section 20 of the Arbitration Act, 1940 and was dismissed as infructuous because an arbitrator was appointed.

7. That the respondent is not a registered firm overlooks the law declared by the Supreme Court that for purposes of arbitration this is irrelevant. Besides, this plea cannot be urged in execution. If at all it had to be urged when respondent sought arbitration.

8. The impugned order has correctly noted the relevant facts and the law. The appeal is dismissed in limine and therefore no costs.

CM No.45367/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

YOGESH KHANNA, J.

DECEMBER 06, 2016

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