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

\+ W.P.(C) 6074/2015 & C.M.No.11036/2015

PUSHPA DEVI ..... Petitioner

Through: Mr.Gyan Prakash and Ms.Neeraj, Advocates

versus

DELHI COOPERATIVE HOUSING FINANCE CORPORATION LIMITED & ANR. ..... Respondents

Through: Mr.Sunil Sabharwal and Mr.Chirag Babbar, Advocates for R-1.
Mr.Rakesh Makhija, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R. K. GAUBA

O R D E R

% **09.03.2016**

1. The petitioner has moved an order of the Tribunal, which refused to entertain the appeal against an award dated 03.04.2006.

2. The petitioner claims that she purchased a flat AG-18 from a member by General Power of Attorney; significantly, his membership has not yet been confirmed. The Arbitrator had made an award pursuant to a claim by the Delhi Cooperative Housing Finance Corporation Limited against the society. In execution proceedings it transpired that the share of the petitioner/flat owner had not been paid. The petitioner appeared before the Assistant Collector during the execution proceedings and undertook to make good the amount due within three months. The order of the Assistant Collector was challenged before the Financial Commissioner in a revision after the

attachment order was made on 31.01.2013. In the course of those revision proceedings the petitioner undertook to reply the amounts within three months – as is recorded by order dated 18.09.2014. The order pertinently states as follows:

> *"3. I have heard the Counsels for both the sides at length. The Counsel for petitioner could not make a convincing case for the admission. On the other hand, Ld.Counsel for R-2 has produced copy of the proceedings of the lower Court, perusal of which suggest that Assistant Collector has passed an order after giving adequate opportunity to the petitioner. Petitioner could not make any convincing arguments for allowing any interference with the execution order issued by the Assistant Collector. However, the petitioner has offered that he is willing to make payment of outstanding dues provided three months time is given to him. The petitioner is at liberty to make this offer before the Assistant Collector who should consider it as per law. The case is, therefore, disposed of with the above observations."*

3. In these circumstances, the petitioner filed an appeal before the Tribunal contending that the award which crystallised liability was erroneous. The Tribunal did not entertain the appeal and rejected an application under Section 14 read with Section 5 of the Limitation Act.

4. Learned counsel contends that the award in so far as it casts excess liability upon the petitioner cannot be sustained. It is further submitted that the Tribunal fell into error in refusing to condone the delay since the original award itself was not available.

5. Proceedings before the Financial Commissioner again show that the petitioner was aware of the execution proceedings as far back as in 2012; there was no due diligence on the part of the petitioner or her attorney – i.e. the subsequent transferee to pursue the remedies. Furthermore, the Court notices that the dispute sought to be raised is essentially in terms of appreciation of a question of fact concerning the correct amount that the petitioner is liable to pay. Consequently, it is not an appropriate case to entertain the proceedings under Article 226. However, it is open to the petitioner to urge all the contentions with respect to the correctness or otherwise of the calculations during the execution proceedings. The amount deposited in pursuance of the order of the court shall be retained by the Delhi Cooperative Housing Finance Corporation Limited till the completion of execution proceedings; it shall be adjusted in accordance with the final orders.

6. The writ petition along with the pending application is dismissed in the above terms.

S. RAVINDRA BHAT, J

R. K. GAUBA, J

MARCH 09, 2016

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