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

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**W.P.(C) 11453/2016**

Date of decision: 6<sup>th</sup> December, 2016

**SADBHAWNA COOPERATIVE GROUP HOUSING SOCIETY  
LTD** ..... Petitioner

Through Mr. Sudhir Nandrajog, Sr. Advocate  
with Mr. Ankur Arora, Ms. Srishti Sharma and  
Ms. Surya Rajappan, Advocates.

Versus

**ARVIND KUMAR SHARMA** ..... Respondent  
Through

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**  
**HON'BLE MR. JUSTICE CHANDER SHEKHAR**

**SANJIV KHANNA, J. (ORAL)**

Sadbhawna Cooperative Group Housing Society Ltd. in this writ petition has impugned statutory arbitration Award dated 29<sup>th</sup> February, 2012 made under Section 71 of the Delhi Cooperative Societies Act, 2003 and the order dated 1<sup>st</sup> July, 2016, passed by the Delhi Cooperative Tribunal affirming the said award.

2. The arbitration proceedings were invoked by Arvind Kumar Sharma, the respondent before us, asserting that he was a member of the petitioner Sadbhawna Cooperative Group Housing Society and would be accordingly entitled to allotment of flat.

3. Learned senior counsel appearing for the petitioner submits that the Cooperative Society was initially in control of some unscrupulous persons, who were property dealers and they had made a number of bogus enrolments. In 2003, the administrator appointed by the Registrar of Cooperative Societies had sent the letter dated 4<sup>th</sup> September, 2003, asking the respondent to pay Rs.5,00,000/- within 10 days towards construction fund. The said letter was received by the respondent on 9<sup>th</sup> November, 2003, but the payment was not made. Subsequently, the administrator had published an advertisement dated 20<sup>th</sup> September, 2003, wherein a list of members, who had not replied to the administrator's letter dated 28<sup>th</sup> August, 2003 was published, and they were asked as to why expulsion proceedings against them should not be initiated. The administrator on 27<sup>th</sup> September, 2003 published a list of members, who had not responded to the letters on the ground of non-existence, disinterest in

membership or whose whereabouts were not known. This list of illegal members was ultimately rectified in the Special Body Meeting called by the administrator on 12<sup>th</sup> October, 2003 and the membership of the persons enlisted had ceased to be operative from the said date.

4. In the present case, the respondent in the year 2002 had filed proceedings before the consumer forum under the Consumer Protection Act. These proceedings, it is obvious, were initiated well before the administrator had issued the letters dated 28<sup>th</sup> August, 2003 and 4<sup>th</sup> September, 2003.

5. As far as the membership of the respondent is concerned, the Cooperative Society cannot deny his membership as his details of the respondent were entered into the membership register in 1995 and he was given membership No.196. The letters written by the administrator in 2003 addressed to the respondent, would itself indicate that the respondent was enlisted and shown as a member. In these circumstances, the contention of the petitioner that the respondent had filled up an application form, which was circulated by Sterling City Development Company Pvt. Ltd., has to be rejected. The respondent may have filled the said form, but what is important and

relevant is that the respondent was duly treated as enrolled member. Even if there were lapses and faults in not passing a formal resolution, etc., these were internal lapses, attributable to the petitioner society. In fact, the assertion as made by the petitioner society would show and highlight the gullibleness and naivety of the respondent, who was unaware of the legal intricacies. The respondent was an innocent layman, apparent from filing of proceeding under the Consumer Protection Act. Rather than a legalistic approach, the award and the appellate order take a holistic view so as to not deny and oust a person waiting since 1995. The respondent had perceived and believed that he had been cheated and duped. The respondent was at the receiving end, and not one of those who had indulged in illegalities. This precisely, what has weighed and has counted in the two pronouncements i.e. the award and the appellate order under challenge.

6. The impugned Award specifically records that the membership of the claimant had ceased on 27<sup>th</sup> September, 2003. The defence of the petitioner-Cooperative Society before the Arbitrator was that the respondent was enrolled as a member by illegal and fraudulent means and he should not have been enrolled as a member. The petitioner's

statement that the respondent had ceased to be a member itself shows that they accept that the respondent was enrolled as a member at the first stage. For cancellation of membership, the petitioner has failed to show that they have followed rules and regulations of expulsion as envisage in Rule 36 of the Delhi Cooperative Societies Rules, 1973 as well as the procedure as laid down by the RCS office vide its directive dated F-47/GH/Directive/89-90 dated 26<sup>th</sup> March, 1990. Similarly, the petitioner has also failed to follow the procedure laid down under Section 40 of the Act, which stipulates that the expulsion or cessation has to be approved by the Registrar, Cooperative Societies. Unless, the said action was approved by the Registrar, Cooperative Societies, it cannot be termed that cessation or expulsion is legal. The petitioner Cooperative Society has nowhere pleaded nor has placed on record any document that the cessation of the respondent has been approved by the Registrar, Cooperative Societies. It is also not pleaded by the petitioner Cooperative Society that the respondent has at any time tendered resignation from membership and that the society has refunded the amount deposited by the respondent.

7. The petitioner before the Tribunal had submitted that the claim of the respondent was barred by limitation. The said contention obviously is not correct, for the respondent had earlier initiated proceedings under the Consumer Protection Act and subsequently initiated proceedings under the Delhi Cooperative Societies Act. The arbitration application filed by the respondent was initially rejected by the Registrar, Cooperative Societies, but the respondent has succeeded before the Cooperative Tribunal. The Cooperative Society had then filed W.P. (C) No. 1921/2011, which was disposed of vide order dated 29<sup>th</sup> August, 2011 by a Division Bench of this Court. As per the said order, the respondent had agreed to withdraw the consumer complaint and the disputes between the Cooperative Society and the respondent were referred to arbitration.

8. Another contention raised by the petitioner Cooperative Society is that the respondent in the consumer complaint had sought refund of the amount deposited by him, but had subsequently in the arbitration proceedings raised the claim that his membership should continue. We are not inclined, for this reason to issue notice in the writ petition, for the respondent could have amended his claim. It is apparent that

the respondent did change his stand, on becoming aware of the legal position. For the reasons and grounds indicated and referred to above, the contention of the petitioner should be rejected.

9. We have referred to the contentions of the petitioner society and the impugned orders, and have made observations in some detail to satisfy ourselves that the orders under challenge do not suffer from any perversity. We are not the appellate court and would not exercise writ jurisdiction even if we feel a contrary view was possible. The Arbitrator and Appellate Authority had the benefit of hearing the parties and have taken a reasonable and plausible view, which is not absurd or illogical.

10. Before the allotment of flats, the society and Registrar, Cooperative Societies are required to examine the question of eligibility, etc. which means that the authority would examine whether the respondent was qualified to be a member and has not incurred disqualification. The impugned Award and order do not bar or prohibit the said enquiries or examination. Question of residence, if raised and relevant, could be examined then. Similarly, the award/order under challenge does not quantify the amount

payable, or decide whether interest would be payable. These aspects are open and we hope and trust that the petitioner society would take a reasonable view.

8. In view of the aforesaid discussion, the writ petition is dismissed.

**SANJIV KHANNA, J.**

**CHANDER SHEKHAR, J.**

**DECEMBER 06, 2016**  
**NA**