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

+ **RSA 104/2016 and C.M. Appl. Nos. 13417-18/2016**

ELIAMMA SEBASTIAN

..... Appellant

In person.

versus

NCT OF DELHI& ORS

..... Respondents

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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20.07.2016

1. Notice was issued in this appeal, but it is noted that process fee was not filed. Today appellant, who appears in person, says that she cannot file process fee for service by all modes because the appellant is not a rich person and therefore notice be only issued by one method, i.e. by process server. In view of the fact of non-filing of the process fee, I have examined the case and have gone through the judgment of the First Appellate Court and as to whether Regular Second Appeal under Section 100 CPC lies, i.e. whether or not there arises a substantial question of law under Section 100 CPC for the appeal to be entertained.

2. The judgment of the First Appellate Court shows that appellant/plaintiff filed a suit for permanent injunction against

respondent No.2/Co-operative Society alleging illegal disconnection of water and electricity. Whereas the appellant/plaintiff pleads that she has paid all the charges but the Society claims that the charges are not paid. I am not going into the detailed merits of the matter, inasmuch as, the First Appellate Court has held that the disputes are between the appellant/plaintiff as a member of the Co-operative Society and the Co-operative Society, and hence the suit is barred by the provision of Section 70 of the Delhi Co-operative Societies Act, 2003.

3. The relevant paragraphs of the judgment of the First Appellate Court holding the suit to be barred on account of provision of the Delhi Co-operative Societies Act, 2003, are paragraphs 9 and 10 and which read as under:-

“9. Perusal of the suit of the plaintiff, it appears that there is a dispute of arrears of water and electricity charges between the plaintiff and society. Now, it is to be seen by this Court as to whether Learned Trial Court has correctly held that present suit is barred U/s 70 of Delhi Co-operative Societies Act, 2003 or not. Section 70 of the said Act is reproduced herein below:-

“70. Disputes which may be referred for arbitration (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the cooperative society or its committee against a paid employee of the co-operative society arises –

(a) among members, past members and persons claiming through members, past members and deceased members; or
(b) between a member, past member or person claiming through a member, past member or deceased member and the co-operative society, its committee or any officer, agent or employee of the co-operative society or liquidator, past or present; or

(c) between the co-operative society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the co-operative society; or

(d) between the co-operative society and any other co-operative society, between a co-operative society and liquidator of another co-operative society or between the liquidator of one co-operative society and the liquidator of another co-operative society; such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such disputes.

(2) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

(3) The Registrar shall decide the aforesaid question within a period of ninety days and in case the aforesaid question, as enumerated under sub-section (2) is not decided within the stipulated period of ninety days, the dispute shall be deemed to have been admitted under section 70 of this Act and the same shall be referred for decision under section 71.

(4) (a) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under sub-section (1) shall - (i) when the dispute relates to the recovery of any sum including interest thereon due to a co-operative society by a member thereof, be computed from the date on which such member dies or ceases to be member of the co-operative society, be three years; (ii) save as otherwise provided in sub-clause (iii), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section

(1), be six years from the date on which the act or omission with reference to which the dispute arose or took place; (iii) when the dispute relates to a co-operative society which has been ordered to be wound up under section 95 or section 96 or section 97 or in respect of which an administrator has been appointed under section 37, be six years from the date of the order issued under section 95 or section 96 or section 97 or section 37, as the case may be; and (iv) when the dispute is in respect of an election of an officer of a co-operative society be thirty days from the date of the declaration of the result of the election. (b) The period of limitation in the case of any other dispute except those mentioned in the foregoing clause which are required to be referred to the Registrar shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute was a suit and the Registrar a civil court. (c) Notwithstanding anything contained in clauses (a) and (b), the Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitrations under this Act, as if proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

SECTION 83 of Delhi Co-operative Societies Act, 2003 is also reproduced herein below:

83. Settlement of disputes. (1) Notwithstanding anything contained in any law relating to rents or any other corresponding law for the time being in force in Delhi, any dispute relating to the occupation or recovery of possession of any plot, dwelling unit or flat in any co-operative housing society, the recovery of dues payable by a member or suballottee to a co-operative housing society or vice-versa arising on or after the date of the commencement of this Act and suits or proceedings pending in any court after such commencement, shall be deemed to be a dispute within the meaning of section 70 of this Act and shall be decided in accordance with the provisions of this Act, and no court or other tribunal or authority shall have jurisdiction to entertain and decide any proceedings in

respect of such disputes.

10. After co-joint reading of both provisions of Delhi Co-operative Societies Act, it is clear that there is a complete mechanism for redressing the dispute in aforesaid Act if there is any dispute arising between society and its member in respect of recovery of dues. It also provides an alternate efficacious remedy of dispute redressal by way of proceedings before Registrar of Co-operative Societies. It is also mandate of the aforesaid Act that Civil Court shall not entertain such disputes arising between the parties. In the present case, there is a dispute of arrears of water and electricity charges and maintenance between society and petitioner, who is a member of society which is subject matter of Delhi Co-operative Societies Act, 2003. In the light of the aforesaid facts and provisions of Delhi Co-operative Societies Act, I find that Learned Trial Court has correctly observed that suit of the plaintiff is barred U/s 70 of the Delhi Co-operative Societies Act. It is worth to note here that the plaintiff has also mentioned in the present appeal that since Registrar of Cooperative Societies and Delhi Police have not taken any action upon her complaints, therefore, the present appeal is filed U/s 7,8 and 9 of the Anti Corruption law. Since plaintiff has filed a civil suit before the Trial Court, which is supposed to pass an order on civil disputes and now in appeal too only civil disputes can be resolved. The allegations levelled by the plaintiff against the Co-operative Society and its President/SHO are of criminal nature which can not be readdressed by the civil court or appellate court.”

4. I may note that the courts below have also held that the suit is barred on account of non-service of the pre requisite notices to the Governmental authorities under Section 80 CPC and Section 140 of the Delhi Police Act. But I am not going into these aspects.

5. In view of the above, I do not find that any substantial question of law arises because once the disputes are between a member of the Co-operative Society and the Co-operative Society filing of the civil

suit is barred. The present appeal is therefore dismissed.

VALMIKI J. MEHTA, J

JULY 20, 2016

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