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

+ **W.P.(C) 7084/2015**

Date of decision: 3rd August, 2016

THE FARMERS COOPERATIVE GROUP HOUSING SOCIETY LTD.

..... Petitioner

Through Mr. Anil Kumar, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondent

Through Mr. Shatrajit Banerji, Advocate
for R-1 and R-2.

Mr. N. S. Bhullar, respondent No.3 in person.

Mr. Jitendra Kumar Singh, Assistant Registrar
from the office of Registrar Cooperative
Societies.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL)

The Farmers Cooperative Group Housing Society Limited in this writ petition under Article 226 of the Constitution has impugned and challenged a common order dated 25th February, 2015 passed by the Delhi Cooperative Tribunal disposing of Appeal Nos.62/2010 and 25/2011, filed by Nishant Singh Bhullar, the respondent No.3 before us.

2. Appeal No.62/2010 was directed against the order dated 26th April, 2010 passed by the Registrar, Cooperative Societies under Section 70 of the Delhi Cooperative Societies Act, 2003 read with Rule 84(4) of

the Delhi Cooperative Societies Rules, 2007. Paragraph 23 of the impugned order records that Appeal No.62/2010 filed by the respondent No.3 fails and is accordingly dismissed. Paragraph 24 and 25 of the impugned order records that Appeal No.25/2011 filed by respondent No.3, Nishant Singh Bhullar is accepted and the Award dated 13th December, 2010 stands set aside with an order of remand to the Arbitrator, who shall decide the claim again without taking into account claim of Rs.1,12,277/-.

3. Learned counsel for the petitioner submits that there is a contradiction in the impugned order, for it records that Appeal No.62/2010 challenging the order of the Registrar, Cooperative Societies referring to the Arbitrator has been dismissed, yet in paragraphs 13 and 25 of the impugned order, it is recorded that the claim amount of Rs.1,12,277/- cannot be made subject matter of reference. Paragraph 13 of the impugned order for the sake of convenience is reproduced below:-

“The contention of the appellant that the claim petition bearing no.115/JR/GH/94/2014 filed by the society to recover Rs.1,12,277/- will go against the society is acceptable. The order dt. 15.2.95 passed by the then Joint Registrar (Arb.), a copy of which is available on the record, goes against the society, so far as the recovery of that amount in the claim petition is concerned. The society cannot be permitted now to say

that it did not hear from the office of RCS or from the arbitrator as to what had happened to the arbitration case no.115/JR/GH/94/2014. The society cannot be permitted to include the amount of Rs.1,12,277/- in the present claim petition.”

4. The contention of the petitioner is that they were never informed of the order dated 15th February, 1995 passed by the then Joint Registrar (Arbitration). It is submitted that there is no material or evidence to show that this order, dated 15th February, 1995, was communicated to the petitioner-Cooperative Society and if there was no communication, it cannot be assumed that the order was known to the cooperative society. Awareness and knowledge cannot be presumed. The impugned order without recording a firm and affirmative finding that the order dated 15th February, 1995 was communicated, directs that the claim of Rs.1,12,277/- should be deleted. Our attention has been drawn to the findings recorded in paragraph 15 on the question of limitation and it has been observed by the Cooperative Tribunal that this aspect, question of limitation, was a referable dispute and could only be raised and decided in the arbitration proceedings and not at the time of reference.

5. Mr. Bhullar, respondent No.3, who appears in person, submits that he had filed a civil suit against the petitioner Cooperative Society before

Additional District Judge, Delhi, being Suit No.16 of 1995. In the said suit, the Cooperative Society had filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and had pleaded that an arbitration case was pending before Mr. Atar Singh, Arbitrator/Registrar's nominee and was fixed for hearing on 17th October, 1995. The reference for arbitration was made vide order dated 14th February, 1994, passed by Mr. G.P. Tripathi, Joint Registrar (Arbitration) admitting the case to arbitration under Section 60 of the Delhi Cooperative Societies Act, 1972.

6. We fail to understand how the aforesaid assertion in the application under Order VII Rule 11 filed by the Cooperative Society would show that the petitioner Cooperative Society was aware of the order dated 15th February, 1995 passed by the Joint Registrar (Arbitration). The dispute/claim pending before Mr. Atar Singh, Arbitrator related to a different claim referred to him vide the order dated 14th February, 1994. The submissions and contentions raised by the petitioner-Cooperative Society cannot be rejected without elucidation and examination. The impugned order does not address the question and submission. The issue is not whether the order dated 15th February, 1995

was available on the file, but whether the order was communicated, and whether there was a lapse and failure to pay the fee.

7. In view of the aforesaid discussion, we feel that the matter requires remand and a fresh decision by the Cooperative Tribunal, who shall examine and go into the question whether or not the order dated 15th February, 1995 was ever communicated to the Cooperative Society and if such order was communicated, what would be the effect of non-payment of the fee thereafter? The issue of limitation will also be examined afresh.

8. The reason given by the Cooperative Tribunal to allow the Appeal No. 25/2011, laying challenge to the Arbitrator's Award dated 13th December, 2010 is to be found in paragraphs 21 and 22, of the impugned order which read:-

“21. A perusal of the record reveals that vide order dt. 6.8.2010 passed by the earlier bench the Id. Arbitrator (R5 in appeal no.25/2011) had been directed not to pass the final award till the next date of hearing. The earlier bench had adjourned the matter to 14.9.2010, 19.10.2010 and 17.1.2011. Thereafter also this appeal had been adjourned from time to time. However, we need not mention the order dates as suffice it to say that the order dt. 6.8.2010 had not been specifically modified or varied or vacated.

22. The record also show that the Id. Arbitrator was

informed about the passing of the order dt. 6.8.2010. Vide a letter addressed to the Asstt. Registrar, the Id. Arbitrator had sought extension of time from 14.9.2010 to 14.10.2010 or as per direction of the court. Copy of the order dt. 6.8.2010 passed by the then tribunal had been attached by the Id. Arbitrator without seeking any clarification from the tribunal as to whether the appeal bearing no. 62/2010 filed by the appellant has been disposed off by the tribunal or the order dt. 6.8.10 has been vacated or not by the tribunal, passed the impugned award dt. 13.12.2010. This award is therefore, liable to set aside.”

9. Confronting and questioning the reasoning, the Counsel for the Cooperative Society submits that the assertion and facts noted are factually incorrect. The arbitration proceedings were stayed vide interim order dated 6th August, 2010, but the stay was not extended on the next date by the Cooperative Tribunal after the hearing held on 14th September, 2010. The impugned order erroneously records that the order dated 6th August, 2010 staying the arbitration proceedings was not modified or varied or vacated. In fact, the interim stay granted on 6th August, 2010 was till the next date of hearing fixed on 14th September, 2010 and was not extended.

10. To decide, we would like to reproduce the two orders. The order dated 6th August, 2010, granting stay reads as under:-

“06.08.2010

Present: Appellant in person. Advocate Sh. Anil Kumar for society and respondent no.4. Sh. Mohan Chand Gaur on behalf of Arbitrator with record.

Sh. Anil Kumar Advocate for respondent society has requested time to submit the reply. Advance copy be handed over to the appellant.

Proceedings may continue before Arbitrator but no final award shall be passed by the Arbitrator till the next date of hearing.

Case is adjourned to 14.09.2010 at 12.00 Noon.

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Order dated 14th September, 2010, passed after the Cooperative Society had entered appearance as a respondent therein, reads as under:-

“14-9-2010

Appellant in person. Adv. Sh. Anil Kumar present for Resp. no.1 & 4. Reply not filed. It is submitted that there are chances of compromise between the parties, so the case adjourned for compromise & reply for 19-10-2010 at 3 00 p.m.

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DCT”

11. Order dated 6th August, 2010 had directed that the arbitration proceedings may continue before the Arbitrator, but no final order shall be passed till the next date of hearing. The said order was operative till

the next date of hearing, i.e. 14th September, 2010. The order dated 14th September, 2010 did not extend the said stay. It is possible to urge that the Cooperative Tribunal had erroneously or inadvertently failed to record or note extension of stay. However, hearings were held thereafter on 19th October, 2014. Mr. Bhullar did not ask for extension of stay or file an application that by mistake stay was not extended. We have also examined the ground of appeal filed by Mr. Bhullar before the Cooperative Tribunal. He had stated that the Cooperative Tribunal did admit the Appeal No.62/2010, but had declined to grant stay of arbitration proceedings till disposal. It was not asserted and contended that the stay order granted on 6th August, 2010 directing that the final Award shall not be passed, was extended and had continued to remain in operation even after 14th September, 2010. This being the factual position, we do not think that the Cooperative Tribunal was justified in setting aside the Award on the aforesaid ground and reason.

12. As a result, we set aside the Cooperative Tribunal's order dated 25th February, 2015 whereby Appeal No.25/2011 preferred by Mr. Bhullar has been allowed. However, this would mean that Appeal No.25/2011 filed by Mr. Bhullar challenging the Award dated 13th

December, 2010 would be heard and decided afresh on merits. In other words, Appeal No.25/2011 has been wrongly allowed on the ground that the Arbitrator could not have passed the final Award in view of the stay order passed on 6th August, 2010. The appeal will be examined on merits. We further clarify that we have not examined merits of the Appeal No.25/2011 or commented on the same. We would also clarify that we have not decided Appeal No. 62/2010, nor finally adjudicated whether or not the order dated 15th February, 1995 passed by the then Joint Registrar (Arbitration) was ever communicated to the petitioner Cooperative Society and if such order was communicated, what would be the effect of non-payment of the fee?

13. To cut short the delay, the parties are directed to appear before the Cooperative Tribunal on 9th September, 2016, when a date for further proceedings would be fixed.

The writ petition is disposed of without any order as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

AUGUST 03, 2016
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