

\$~9 & 10 (of 13.9.2016)

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

+ W.P.(C) 9415/2015

Date of decision: 14.9.2016

THE GEWA SAMPADA COOPERATIVE GROUP HOUSING
SOCIETY LTD. Petitioner

Through: Mr. V.K. Tandon & Mr. Rakesh Kumar,
Advocates.

versus

JEET MAL HIRAWAT & ORS. Respondents

Through: Ms. Rekha Palli, Senior Advocate with
Mr. Kumar Vikram & Ms. Garima
Sachdeva, Advocates.
Mr. Satyakam, ASC for GNCTD.

WITH

+ W.P.(C) 9433/2015 & C.M. No.22039/2015

THE GEWA SAMPADA COOPERATIVE GROUP HOUSING
SOCIETY LTD. Petitioner

Through: Mr. V.K. Tandon & Mr. Rakesh Kumar,
Advocates.

versus

JEET MAL HIRAWAT & ORS. Respondents

Through: Ms. Rekha Palli, Senior Advocate with
Mr. Kumar Vikram & Ms. Garima
Sachdeva, Advocates.
Mr. Satyakam, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL)

1. These two writ petitions have been filed by Sewa Sampada Cooperative Group Housing Society Ltd.
2. The first W.P. (C) No.9415/2015 impugns the order dated 21.1.2013 passed by the Delhi Cooperative Tribunal dismissing the appeal No.130/2011/DCT filed by the petitioner Cooperative Society challenging the order dated 7.6.2011 passed by the Joint Registrar (Arbitration) referring the claims made by Jeet Mal Hirawat to arbitration.
3. The W.P. (C) No.9433/2015 impugns the arbitration award dated 18.11.2013 and the appellate order dated 30.3.2015 passed by the Delhi Cooperative Tribunal upholding the award.
4. The learned counsel for the petitioner Cooperative Society had stated that 172 flats were constructed out of which 155 flats were allotted on 29.10.1989 and 17 flats were allotted on 25.2.1990. The application under Section 70 of the Delhi Cooperative Societies Act, 2003 invoking the arbitration provisions was filed on or about 23.3.2011. Earlier Jeet Mal Hirawat had filed a writ petition on 3.6.2010 which was disposed of giving liberty to invoke the arbitration provisions. Thus, the allotment of flats was challenged and questioned after nearly 18/19 years.
5. It is stated that the flats constructed have already been allotted to the members and there is no vacant flat. Hence, the direction given in the award dated 18.11.2013 and upheld by the Delhi Cooperative Tribunal in their order dated 30.3.2015 cannot be implemented and to

this extent, the claim or the prayer of the respondent was clearly barred by limitation.

6. The learned counsel for the petitioner has drawn our attention to the arbitrator's observations recorded in paragraph 25 (v) of the award regarding Jeet Mal Hirawat's negligent and lethargic behaviour. The learned counsel for the petitioner, however, accepts that the respondent Jeet Mal Hirawat had paid Rs.1,29,000/- to the Cooperative Society and the said amount has to be refunded to the respondent. He states that they would leave it to the court to decide the appropriate rate of interest to be paid on this amount.

7. Another contention raised by the Cooperative Society is that there is a contradiction in the orders dated 7.6.2011 and 21.1.2013 made subject-matter of challenge in W.P. (C) No.9415/2015 and the findings recorded in the impugned award dated 18.11.2013 and order dated 30.3.2015. The orders dated 7.6.2011 and 21.1.2013 had only taken a *prima facie* view on the question of limitation as the limited issue raised was whether or not the claims and disputes raised by Jeet Mal Hirawat should be referred to arbitration. The issue of limitation was examined and finally adjudicated by the Arbitrator. The impugned order dated 30.3.2015 passed by the Delhi Cooperative Tribunal has held that the question of limitation, i.e., whether the claim made by the respondent, Jeet Mal Hirawat was barred by limitation was already adjudicated and finally decided vide order dated 21.1.2013 passed by the Delhi Cooperative Tribunal.

8. In view of the statement made by the learned counsel for the petitioner Cooperative Society that Rs.1,29,000/- paid could be

refunded with interest, we had asked the learned counsel for the respondent to obtain instructions. The counsel for the respondent, after speaking to Jeet Mal Hirawat, has stated that the respondent would be satisfied if Rs.1,29,000/- is refunded by the petitioner Society with interest at the rate of 10 per cent per annum.

9. We find that the statements made by the petitioner and the respondent, Jeet Mal Hirawat are fair, just and equitable. In these circumstances, we are not inclined to remit the matter to the Delhi Cooperative Tribunal for fresh adjudication. We also feel that interest at the rate of 10 per cent per annum would be justified. The respondent had paid Rs.1,29,000/- out of the total amount due of Rs.1,68,160/-. The respondent, Jeet Mal Hirawat, claims that he had made balance payment by way of two cheques which were not encashed. The award and the order of the Tribunal do somewhat support the said version. Moreover, the respondent, Jeet Mal Hirawat, has agreed to refund of the money rather than press his claim.

10. In these circumstances, we direct the Cooperative Society to refund Rs.1,29,000/- along with interest @ 10 per cent per annum. Interest would be payable from the date when the last payment was made and would continue till the refund due is actually paid. The repayment by way of demand draft would be made within three months from today. In case, partial payment is made, the amount paid would be first adjusted towards the interest. We further direct that in case any additional flats are constructed by the petitioner Society, then the respondent, Jeet Mal Hirawat would be given an option to accept the

same on the terms and conditions as fixed and as per the mandate of the Delhi Cooperative Societies Act, 2003 and applicable rules.

11. The writ petitions are allowed in the aforesaid terms. The impugned order will be treated as modified to the extent indicated above. There would be no order as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

**SEPTEMBER 14, 2016
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