IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.7547 of 2017
Date of decision: 30.11.2017

Silverton Cooperative Housing Society Ltd. **...... Petitioner**

Versus

Santosh **...... Respondent**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Ravi Sharma, Advocate
for the petitioner.

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ANIL KSHETARPAL, J. (ORAL)

It is not in dispute that the Joint Registrar Co-operative Societies passed the award which reads as under:-

> *"After careful perusal of the record available on the file, I have come to this conclusion tht the present petition is a fit case for issuance of a direction to the respondent society to transfer the aforesaid amounts of earnest money of the petitioners, which is lying in the account of the society, to the Chandigarh Housing Board within fifteen days from the receipt of the copy of this orders. The Chandigarh Housing Board is also directed to accept the earnest money along with other document like application forms of the petitioners and allow them to deposit remaining amounts to make it 25% earnest money by giving some reasonable time for the same. Chandigarh Housing Board is further directed to treat the case of petitioners also like that of other members who have deposited 25% of the earnest money and have already been allotted land in the year 1994, if any interest is to be charged by the Chandigarh Housing Board from the petitioners then the same will be borne by the respondent society itself. The present petition is hereby allowed."*

An execution petition was filed. The Cooperative House Building Society filed objections. The aforesaid objections were dismissed by the learned Executing Court by recording as under:-

> *"6. After hearing both the parties and gone through the case file carefully and minutely, my issue-wise finding is as under:-*
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> *7. **Issues no.1 and 2:***
>
> ***1. Whether the decree holder has misuse the process of law?OP-JD***
>
> ***2. Whether the decree holder has not come to the Court with clean hands and has concealed the material facts?OP-JD***
>
> *8. Both these issues are discussed together being interconnected. The objector has alleged that the directions given by the Joint Registrar, Co-operative Society, UT, Chandigarh vide order dated 10.12.1996 cannot be termed as 'Award' arising out of any 'dispute' within the meaning of Section 55/56 of the Punjab Coop. Societies Act 1961 as applicable to UT, Chandigarh. Therefore, the orders of Registrar, Certificate under Section 63 of Decree dated 01.09.2008 are not decree. Further averred that the society was under liquidation of the order of Registrar on 03.11.1996. Since the society (JD) was under liquidation therefore, the Finance Secretary, UT never allowed the society to deposit the 25% earnest money of the members to the Chandigarh Housing Board in the year 1997. The scheme known as the 'The Chandigarh Allotment of land to the Coop Societies Scheme 1991' under which the land was to be allotted on chunk basis by the Chandigarh Administration to the Chandigarh Housing Board which was further to be allotted to the societies for thier members. The said scheme was repealed on 21.01.1997. The orders of liquidation of society were withdrawn in the year 1998 and after it the Finance Secretary vide order dated 18.01.1999 directed Chandigarh Housing Board to accept 25% earnest money alongwith interest @ 18% p.a. upto the date of*

Hon'ble High Court order dated 18.12.1996. The society was not at any fault. The JD Society was permitted to deposit/transfer the 25% of earnest money with 18% interest on 03.03.1999. The decree holder requested in 2006 to refund the amount of Rs.23,000/- as such the JD society refunded the amount by cheque No.274758 dated 19.01.2006 and Rs.540 vide cheque no.274759 dated 19.01.2006. After going through the case file and evidence produced on record, this Court is of the considered view that objections taken by the JD Society deserves to be dismissed.

9. In the present case firstly it is admitted that decree holder was member of the society. Also admitted fact that under the Chandigarh Allotment of Land to Co-operative Societies Scheme 1991, the decree holder has applied and deposited a sum of Rs.23,000/- in the Bank Account of JD i.e. Society. The Objector has failed to prove/establish on file that what are the facts concealed by the decree holder. The first objection of JD is that the Awaard of Registrar is not award within the meaning of Section 55/56 of the Punjab Coop. Societies Act 1961 as applicable to UT, Chandigarh. Therefore, the order dated 10.12.1996 passed by the Joint Registrar, Coop. Societies, UT, Chandigarh exercising the power of RCS, UT, Chandigarh and Certificate of Registrar is not decree but this objection of the JD is not sustainable because as per Section 63 (a) of the Punjab Co-operative Societies Act, 1961 the decision or order of Registrar is deemed as decree. The Section 63 (a) provides:-

> ***"Section 63 (a):*** *On a certificate signed by the Registrar, or any person authorised by him in this behalf be deemded to be a decree of a civil Court and shall be executed in the same manner as decree of such court."*

10. Meaning thereby the decision, award or order duly passed by the Registrar is deemed as decree of Civil Court and shall be executed as decree of such Court. DW1 has deposed that he has verified the record of the RC and no appeal against Award was filed by the Society. DW2 also admitted that *husband of the decree holder late Som Nath was the member of the society. It means the order dated 10.12.1996 and certificate of decree dated 04.09.2008 of the Registrar is decree of Court and executable in same manner as decree of civil Court. The JD has objected that they have already refunded the money of decree holder lying in the Bank of Society in Section 17 on request of decree holder. To prove this fact, the JD has not placed on record any document to show that JD has refunded the money of DH on their request. The JD has not produced on record the account statement of DH Bank nor bank statement of their account to prove that they have refund Rs.23,000/- to DH through cheque No.274758 dated 19.01.2006 and Rs.540 vide cheque no.274759 dated 19.01.2006. DW2 has admitted that he did not get any receipt while handing over cheque of Rs.23,000/- to her son namely Anil Sharma as he is working in Co-operative Department. He is not aware that Rs.23,000/- are still in the account of the society. Further admitted that the certificate of Bank dated 11.01.2008 already on record of the case and same is attached as Annexure DH-3 and the same is mark PZ. Meaning thereby there is no evidence on file to prove that the JD has refunded the amount of the DH on her request. The other objection of the JD is that he did not get any opportunity to defend the case but this objection of the JD is also not sustainable as the DW3 has admitted that matter was decided after hearing both the parties. This fact is also clear from the copy of order dated 10.12.1996 of Joint Registrar produced on record as Ex.DW1/2 that matter was decided after hearing both the parties. The JD has also taken another objection that the Allotment scheme 1991 has already been repealed vide order dated 20.01.1997. But the DH has not deposited the 25% earnest money and interest as per the order of Finance Secretary. But the JD has not produced on record any evidence to show that JD Society ever demanded 25% earnest money alongwith 18% of interest from DH as per the order of Finance Secretary. Moreover, this Court is an* *executing Court and executing Court has to execute the decree within its four corners and it cannot go beyond the decree. The objector/JD has failed to prove what are the facts concealed by the DH and how DH has misused the process of law. On the other hand, DH has shown that objections taken by the JD society is not sustainable. Therefore, issues no.1 and 2 are decided against the JD/Society and in favour of DH.*

11. ***Issues No.3: Whether the objection petition is not sustainable?OP-DH.***

The burden to prove this issue lies upon the Decree holder. In view of my detailed findings given in issues no.1 and 2 above, the objections taken by the JD is not sustainable. Hence, this issue is also decided in favour of the DH and against the JD. The objections filed by the JD is hereby dismissed."

This order has been challenged before this Court in a revision petition under Article 227 of the Constitution of India.

Learned counsel for the petitioner has submitted that the execution petition is barred by time as the execution proceedings have been initiated after more than three years from the date of the order i.e. 10.12.1996. He has further submitted that the award is suffering from infirmities and therefore, it cannot be executed.

I have heard learned counsel for the petitioner at length and with his able assistance gone through the documents available in the paper book.

First argument of learned counsel that the execution petition is barred by time is to be just noticed and rejected. It is specifically noticed by the learned Executing Court that certificate of decree was issued by the competent authority on 04.09.2008. Award itself is not executable. It is the certificate of decree which is executable. The certificate of decree was issued on 04.09.2008. The execution petition was filed on 09.12.2008. Therefore, the argument of learned counsel that the execution petition is filed beyond time has no substance. It may not be significant to note here that the petitioner-society while filing the objections did not bring the attention of the Executing Court to this issue. The argument has been raised for the first time in this Court. In any case, this Court has examined the issue but does not find any substance in the argument.

Next argument of learned counsel for the petitioner is that the award is suffering from infirmities and therefore, it should not be allowed to be acted upon. In the considered opinion of this Court, Executing Court is to implement and execute the decree. The Executing Court cannot refuse to execute the decree.

Still further, learned counsel for the petitioner could not point any substantive error in the award passed by the Joint Registrar.

Learned counsel for the petitioner in last has submitted that the certificate of decree has become unexecutable. It will be noticed that even this objection was not taken by the petitioner in the objection petition. Learned trial Court while adjudicate upon the objection petition, framed three issues. It is clear from the reading of the aforesaid issues that this was not one of the objections of the petitioner.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the order passed by the learned Civil Judge (Jr. Divn.), Chandigarh dated 18.08.2017.

Hence, revision petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

30.11.2017
Dinesh Bansal

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No