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

\+ W.P.(C) 734/2015 and CM APPL. 1304/2015

KAMLA GAUTAM ..... Petitioner

Through: Mr S.D. Singh and Mr Jitender Singh and Mr Kamla Prasad, Advs.

versus

THE PRESIDENT/ SECRETARY, THE JAWALA COOP. URBAN THRIFT AND CREDIT SOCIETY LTD. & ORS. ..... Respondents

Through: Mr Ashu Bhatiya and Mr Netrpal, Advs.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 18.07.2017

1. The petitioner is aggrieved by the order dated 07.08.2014 passed by the Delhi Cooperative Tribunal against an *ex parte* award dated 23.02.2004 made by the Arbitrator appointed under Section 61 of the Delhi Cooperative Societies Act, whereunder she was directed to pay an outstanding loan amount of Rs. 63,475/-, along with interest.

2. It is an undisputed position that the respondent No.1/Society had extended a loan of Rs.40,000/- to the petitioner and she had paid back only a sum of Rs.29,200/-, till the end of the year 2005. Learned counsel for the petitioner had stated before the Tribunal that his client is ready and willing to pay the balance outstanding amount to the

respondent if it could consider reducing the interest factor.

3. In response, the respondent had filed a statement of account, indicating *inter alia* that the outstanding amount towards the principal was to the extent of Rs. 34,170/- and on interest being added on that till 31.07.2014, along with costs and court recovery charges, the said amount had mounted to Rs 1,22,414/-. A copy of the said statement of account was handed over to the petitioner's husband, who had appeared before the Tribunal on 01.08.2014 and he had submitted that they were willing to pay the balance amount if the interest factor is reduced. In view of the submission made on behalf of the petitioner that she was willing to pay back the loan amount if the interest factor is reduced, she was directed to approach the respondent No.1 directly and make such a request. However, no settlement could take place between the parties.

4. The Tribunal has recorded in the impugned order that the loan was granted to the petitioner on the basis of loan documents executed between the parties and, therefore, it was not in a position on its own to reduce the interest component. It was also recorded that counsel for the petitioner was unable to point out how the learned Arbitrator had misconducted the proceedings before himself and nor was any other infirmity/illegality/impropriety noticed in the impugned award for interference. It is also noted that though respondent had filed a statement of account with a copy furnished to the other side, the petitioner had not pointed out any error therein and nor had she filed her own statement of account. Consequently, the petitioner's appeal

was dismissed on merits.

5. Mr. S.D. Singh, learned counsel for the petitioner states that upto the year 2005, the petitioner had deposited a sum of Rs.29,200/- and after filing the present petition in the year 2015, she has deposited an additional amount of Rs.70,000/- (approx.). He submits that though the loan agreement stipulates interest @ 18% *per annum* on the outstanding amount with additional penal interest @ 3% *per annum*, the petitioner is ready and willing to pay the entire amount with interest, if the penal interest is waived.

6. Counsel for the respondent states that on instructions that his client is agreeable to waiving the penal interest w.e.f. the year 2015, when the petitioner had paid back a substantial amount from the outstanding loan amount. The said suggestion is accepted by learned counsel for the petitioner, who states that the petitioner shall pay the outstanding amount, including interest on the amount due and without the penal interest reckoned from 01.01.2015, within four weeks from today.

7. Counsel for the respondent states that to obviate any confusion on the actual amount that was due and payable in the year 2015, the respondent shall communicate the said figure in writing to the petitioner and add thereto interest @ 18% *per annum* from 2015 onwards for arriving at a final figure after adjusting the amounts already paid by the petitioner.

8. Needful shall be done within one week. The petitioner shall pay the amount as communicated by the respondent within four weeks

reckoned from the date receipt of computation.

9. It is made clear that the above order has been passed in the peculiar facts and circumstances of the present case and shall not be treated as a precedent in any other matter.

10. The writ petition is disposed of, along with the pending application.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 18, 2017
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