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

+ W.P.(C) 5930/2017

VIDYUT CGHS LTD.

..... Petitioner

Through : Mr. S.M. Saxena, Advocate

versus

ANIL KUMAR MEHTA & ORS

..... Respondents

Through : Ms. Swaty Singh Malik with

Ms. Yasna Thakran, Advocates for R-3 & 4.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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04.08.2017

1. The petitioner/Society has filed the present petition being aggrieved by the order dated 3.4.2017 passed by the Delhi Cooperative Tribunal (in short '**the Tribunal**') dismissing the Society's application for condonation of delay and as a result, the accompanying appeal filed under Section 112 of the Delhi Cooperative Societies Act, 2003 (hereinafter referred to as '**the Act**').

2. Briefly stated, the facts of the case relevant for deciding this petition are that the respondents No.1 and 2 (members of the petitioner/Society, who had purchased flats through Power of Attorneys) filed claims against the petitioner/Society seeking refund of the entry fee imposed on them along with interest. By an ex-parte Award dated 31.3.2014, the claims of the

respondents No.1 and 2 was allowed and the petitioner/Society was directed to pay a sum of Rs.2,333/- and a sum of Rs.14,741/- to the respondent No.1 and respondent No.2 respectively, along with interest calculated @ 6% p.a. Additionally, the Society was directed to reverse the debit entry of Rs.12,000/- in the accounts of both the respondents.

3. On 7.4.2014, the Administrator of the petitioner/Society filed a review petition before the learned Arbitrator, seeking review of the *ex parte* award. The said review petition was dismissed as not maintainable by an *ex parte* order dated 13.6.2014. On 27.4.2016, after the expiry of one year and ten months reckoned from 13.06.2014 and almost two years reckoned from 31.03.2014, the petitioner/Society filed an appeal before the Tribunal against the *ex-parte* award along with an application for seeking condonation of delay.

4. The explanation offered in the condonation of delay application filed by the petitioner/Society was that on the date the *ex parte* order dated 13.6.2014 was passed on the review application filed by the Administrator of the petitioner/Society, the Society was headless for the reason that the then Administrator (Mr. Deepak Virmani), had resigned on 16.5.2014 and his successor, Mr. K.B. Vashishtha had not joined till then. Thereafter, the petitioner jumps straight to the year 2016 and states that on 21.2.2016, a special General Body Meeting of the Society was convened and it was resolved that an appeal be filed against the *ex parte* Award. Hence the delay.

5. The respondents No.1 and 2 contested the appeal and the application for condonation of delay and submitted before the Tribunal that the appeal was hopelessly barred by limitation and no worthwhile explanation was

offered by the petitioner/Society for condonation of delay. Further, counsel for the respondents No.1 and 2 submitted that award had already been executed in the meantime and therefore, the appeal was infructuous.

6. After hearing the arguments advanced by counsels for the parties, the learned Tribunal observed that the petitioner/Society did not disclose the date on which date, Mr. K.B. Vashishtha, the subsequently appointed Administrator, had taken over the charge of the Society and the date upto which the petitioner/Society was being run by an Administrator; nor did the petitioner/Society disclose the date on which elections were held and a new Managing Committee constituted. Instead, the condonation of delay application simply stated that the Special General Body Meeting of the petitioner/Society was held on 21.2.2016, thus trying to lay the entire blame for the delay at the door of the Administrator.

7. We have perused the impugned order and the documents placed on record by learned counsel for the petitioner/Society. The same reveal that the *ex parte* Award was passed on 31.3.2014. The provisions of Sections 112 (2) of the Act provide for a period upto 60 days for filing an appeal against a decision taken under sub-section (1) of Section 112 of the Act. Therefore, the petitioner/Society had time till the end of May, 2014 to prefer an appeal against the ex-parte award dated 31.03.2014. Instead of filing an appeal, as provided for in the statute, a review petition was filed on behalf of the petitioner/Society on 7.4.2014, which was ultimately rejected by an *ex parte* order dated 13.6.2014 wherein, the learned Arbitrator observed that such an application was not maintainable before him.

8. Even if it is assumed for a moment that the Administrator, who was managing the affairs of the Society, had resigned on 16.5.2014 and his successor had not joined by the date the review application of the Society was dismissed, i.e., by 13.6.2014, the records reveal that the new Managing Committee of the petitioner/Society was elected in the month of December, 2014. In fact, the petitioner/Society has filed a copy of the notice dated 9.12.2014 issued by the then Administrator of the Society (Mr. Y.V.V.J. Rajasekhar) stating *inter alia* that vide order dated 20.6.2014, he was appointed by the Office of respondent No.3/RCS and on the Returning Officer conducting the elections of the Managing Committee of the petitioner/Society on 7.12.2014, the affairs of the Society were handed over to the newly elected Managing Committee on the very same date.

9. That being the position, the contention of Mr. Saxena, learned counsel for the petitioner that the Society had held a General Body Meeting on 21.2.2016 when it was resolved to file an appeal, without offering any explanation whatsoever as to what had transpired between December, 2014 and 21.02.2016 and the steps, if any, taken by the Managing Committee of the Society after taking over the affairs of the Society on 7.12.2014, is absolutely unacceptable. Nor are we persuaded by the explanation offered on behalf of the petitioner/society that the new Managing Committee elected on 7.12.2014, kept on trying to persuade the respondents No.1 and 2 to resolve the issue amicably for over one year, but did not succeed due to their non-cooperative attitude, thus compelling the Society to file an appeal.

10. Once the new Managing Committee of the Society had been elected on 07.12.2014, it was their duty to take legal recourse against the *ex parte* award dated 31.03.2014 as expeditiously, as possible. While offering an

explanation for filing a belated appeal, the petitioner/Society was under an obligation to show just and sufficient cause for the delay that had taken place in approaching the Tribunal. In the present case, there is not a whisper in the condonation of delay application filed before the Tribunal, or for that matter, before us to explain the delay from 13.6.2014, the date on which the review application filed by the petitioner/Society was rejected, till February, 2016 when the General Body Meeting was convened. It is therefore apparent that the petitioner/Society miserably failed to demonstrate its *bonafides* for the inaction and negligence on its part in seeking timely legal recourse against the ex-parte award.

11. As noted above, the period of 60 days available under the statute for filing an appeal against the ex-parte Award dated 31.3.2014, had expired by the end of May, 2014 whereas, the petitioner/Society filed the appeal before the Tribunal only on 27.4.2016. Even if the benefit of Section 14 of the Limitation Act for exclusion of time spent in pursuing the review application is extended to the petitioner/Society, the Administration having mistakenly filed a review application before the learned Arbitrator, when no such application is maintainable in law, there is no explanation whatsoever, offered for the period between 13.06.2014 to 21.02.2016. In view of the fact that the said delay has not been explained at all, much less satisfactorily or convincingly, we are of the opinion that there is no infirmity in the impugned order dated 3.4.2017 whereunder, the Tribunal has rejected the condonation of delay application filed by the petitioner/Society for failure to disclose sufficient cause. Even otherwise, the impugned order records the statement made on behalf of the respondents No.1 and 2 that the ex-parte Award has already been executed, which has not been controverted before

us. In such circumstance, the appeal would have even otherwise, been rendered infructuous.

12. We find the decision arrived at by the Tribunal on the basis of the reasoning given in the impugned order, to be unexceptionable. As a result, the present petition is dismissed *in limine* as meritless.

HIMA KOHLI, J

DEEPA SHARMA, J

AUGUST 04, 2017
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