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*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+   **W.P.(C) 2329/2014 & CM 16598/2014**

BIMAL KUMAR JANA . .... Petitioner
Through: Petitioner-in-person.

versus

DELHI COOPERATIVE TRIBUNAL & ORS. ..... Respondents
Through: Ms Anju Bhattacharya and Ms Deepika Kumari, Advocates for R-3.
Mr Anuj Aggarwal, ASC for GNCTD/R-2.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **10.10.2019**

1. This petition is directed against the award dated 29th December, 2012 passed by the Sole Arbitrator in Arbitration Case No.99/ARB/GH/JR/ARB/11-12, as well as the order dated 25th February, 2014 passed by the Delhi Cooperative Tribunal ('Tribunal') in Appeal No.134/2012/DTC and Appeal No.23/2013/DCT affirming the said award, in terms of which, the Petitioner has been directed to pay to the Respondent No.3 Society a sum of Rs.1,39,620.41 along with simple interest @ 15% per annum from 1st August, 2011, till the date of realization of the said amount.

2. When this petition was first listed before this Court on 15th April, 2014, while directing notice to issue to the Respondents, the matter was adjourned to 7th August, 2014 for completion of pleadings.

3. On the next date i.e. 7th August, 2014, in the application for interim relief, the following order was passed:

> "2. Heard. By way of this application, the petitioner seeks stay of the impugned order dated 25th February, 2014 passed by the Delhi Cooperative Tribunal upholding the Award dated 29th December, 2012 passed by the learned Arbitrator. The petitioner relies on documents issued by the Society which are being disputed by it.
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> 3.Pleadings in the writ petition are not complete and, therefore, the matter cannot be heard today.
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> 4. It is accordingly directed that, subject to the petitioner depositing an amount of Rs.75,000/- with the respondent-Society within a period of four weeks from today, there shall be a stay of the effect and operation of the order dated 25th February, 2014 and Award dated 29th December, 2012. It is made clear that the deposit by the petitioner and the receipt of the amount by the respondent are without prejudice to the respective rights and contentions of all parties.
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> 5. It is made clear that equities in terms of the interest payable on amounts found due and payable by either side depending on the outcome of the writ petition, shall be balanced at the time of final disposal of the writ petition."

4. Thereafter, the matter has been kept getting adjourned from time to time to enable the parties to arrive at a settlement. However, it appears that no settlement has been possible.

5. The Court has heard the submissions of the Petitioner, who appears in person, as well as learned counsel for the Respondents.

6. The factual background in brief is that the Petitioner is a member of the

Respondent No.3 Society and initially made payments for an 'A-Type Flat'. It appears that on 11th August, 1999, the Petitioner's dwelling was upgraded from an A-Type Flat to a 'B-Type Flat'. According to the Petitioner, he made the complete payments for the said flat and possession thereof was given to him on 9th November, 2001. The Petitioner claimed that he had made a total payment of Rs.10,73,994/- and that a 'no due certificate' was also issued by the Respondent No.3 Society confirming that fact on 10th March, 2002.

7. The Petitioner claimed that in the defaulter list issued thereafter, for many years, the Petitioner's name did not figure. There were some disputes raised by the Petitioner about the 'equalization charges' demanded by the Respondent No.3 Society, but the Petitioner's complaint in this regard was rejected as it was barred by limitation. According to the Petitioner, the defaulters list displayed by by the Respondent No.3 Society on 30th September, 2009, showed that a sum of Rs.4551.10 was due from the Petitioner on account of 'insurance payment'.

8. It appears that on 14th October, 2010, the Respondent No.3 Society issued an expulsion notice to the Petitioner for not paying the insurance amount. However, this resolution was not accepted by the Special Registrar of Cooperative Societies.

9. On 14th February 2011, the Respondent No.3 Society raised a demand against the Petitioner for a sum of Rs.1,34,961.41 (principal Rs.49,646/- and interest Rs.85,315.41) for dues for the period between 1998 and 2000.

Following this, the Respondent No.3 Society invoked Section 70 of the Delhi Cooperative Societies Act, 2003 ('DCS Act') and sought reference of the disputes between it and the Petitioner to arbitration. The Joint Registrar (Arbitration) ('JR') passed an order on 9th March, 2012, referring the disputes to arbitration under Section 71 of the DCS Act.

10. Aggrieved by the above order of the JR, the Petitioner filed a review petition, which was dismissed. Thereafter, he approached the Tribunal with an appeal, which again stood dismissed on 4th December, 2012.

11. A perusal of the Tribunal's order of 4th December, 2012 reveals that the Petitioner did raise the plea that the "claim of the Society was time barred, as it was filed after six years". In dealing with this plea, the Tribunal in paragraph 8 of its order dated 4th December 2012, observed that "the file does not show that there is *prima facie* material to hold that the claim of the society is time-barred". The Tribunal was of the view that this was "a mixed question of facts and law and, therefore, it could not have been decided by the Joint Registrar at the threshold".

12. The Tribunal appears to have overlooked that under Section 70 (4) (a) (i) of the DCS Act, the limitation period for recovery of a sum due to a cooperative society by a member was three years. Not only has the Tribunal not referred to the said provision, but it has also failed to notice the fact that the claim against the Petitioner was raised by the Respondent No.3 Society nearly nine years after it had issued a no due certificate. Consequently, even at the threshold, this question ought to have been decided as the fact of the Society having issued a 'no dues certificate' to the Petitioner on 10th March,

2002, was not disputed by the Respondent No.3 Society.

13. In any event, even in terms of the order dated 4th December, 2012 of the Tribunal, it was incumbent upon the Arbitrator to have dealt with this issue of limitation in the Award. As it transpired, the Award dated 29th December, 2012 of the Arbitrator also failed to deal with the issue of limitation. It only noted the stand of the Society that the demand raised was "within the limitation period and not time barred". However, not only are the provisions concerning limitation not discussed in the Award, but even the issue of limitation is not dealt with. The Award simply proceeds to accept the claim of the Society and directs the Petitioner to pay Rs.1,39,620.41 along with simple interest @ 15% per annum from 1st August, 2011 to the Respondent No.3 Society.

14. The Court has also perused the impugned order dated 25th February, 2014 of the Tribunal, dismissing the Petitioner's appeal challenging the aforementioned order. Here again, the Court notices that in paragraph 5 of the impugned order, the Tribunal notes the plea of the Petitioner that the claim raised by the Society was time-barred. However, when it came to dealing with the said issue, the Tribunal in paragraph 12 held as under:

> "12 It is a fact that the order dt. 9.3.12 passed by the Jt. Registrar u/ s 70 had been challenged by the appellant by preferring an appeal no. 134/2012 on 06/07/2012. It was heard by us and was dismissed on 4.12.12. The question of limitation had also been raised in that appeal and we had given cogent reasons to repel the contentions of the appellant. That order dt. 4.12.12 has not been challenged by the appellant. It has become final."

15. The Court is unable to appreciate the above observations of the Tribunal that it had given "cogent reasons" in its earlier order dated 4th December, 2012 for rejecting the plea of limitation raised by the Petitioner. As already noted, in the order dated 4th December 2012, all that was said by the Tribunal was that it did not find any *prima facie* material to accept the plea that the Society's claim was time-barred and that since it was a mixed question of facts and law, it could not have been decided by the Joint Registrar "at the threshold". In other words, not only did the Tribunal not decide the issue, but also implied that it had to be decided by the Arbitrator and not by the JR at the threshold. Therefore, far from giving 'cogent reasons', for deciding the plea of limitation, the Tribunal at no stage decided this issue. Likewise, as already noted, the Arbitrator also did not decide the issue.

16. The outcome of the above discussion is that the Petitioner's threshold plea that the Society's claim is time-barred, was not decided at any of the stages, although he repeatedly raised it right from the beginning., before the JR, and then before the Tribunal twice and, of course, before the Arbitrator. It is unfortunate that despite Section 70 (4) (a) (i) of the DCS Act unambiguously mandating that the claim had to be raised within three years, the JR did not, at the outset, decline to entertain the Society's plea for referring the dispute to arbitration since, clearly, the claim was time-barred.

17. For the aforementioned reasons, this Court sets aside the impugned Award dated 29th December, 2012 passed by the learned Arbitrator, as well as the order dated 25th February, 2014 passed by the Tribunal, rejecting the

Petitioner's appeal. It is held that the claim of the Respondent No. 3 Society is time-barred. As a result, the amount of Rs.75,000/-, deposited by the Petitioner in this Court, pursuant to the order dated 7th August, 2014, shall be returned to him forthwith by the Registry together with the interest that has accrued thereon, if any.

18. The petition is allowed in the above terms. The pending application is disposed of. No order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 10, 2019
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