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

Date of decision: 6th March, 2020

+ W.P.(C) 2585/2020

VIRESH AND ANR.

..... Petitioners

Through: Mr. Alakh Alok Srivastava, Adv.

versus

THE REGISTRAR OF CO-OPERATIVE
SOCIETIES AND ORS.

..... Respondents

Through

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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06.03.2020

D.N. PATEL, CHIEF JUSTICE (ORAL)

W.P.(C) 2585/2020

1. This writ petition has been preferred with the following prayers:

“a. To issue WRIT of Mandamus under Article 226 of Constitution of India for quashing letter dated 22.11.2019 issued by the office of the Registrar of Co-operative Societies. NCT of Delhi. Old Court Building. Parliament Street. New Delhi, advising the petitioners to file a claim/dispute under section 70 of DCS Act. 2003 before the Arbitration Branch with respect to the issue related to GBM dated 22.03.2015 by observing that such an issue can be resolved only by Way of Arbitration.

b. To issue Writ of mandamus directing the respondent no.1. Registrar of Co-operative Societies. NCT of Govt. of Delhi to declare the resolution under agenda item 9 passed in the GBM of the respondent society held on 22nd March. 2015 as null and void.

c. To issue Writ of mandamus directing the respondent no. 1. Registrar of Co-operative Societies. NCT of Govt. of Delhi to declare the resolution in agenda item 14 &15 passed in the GBM of the respondent society held on 24th September, 2017 as null and void.

d. To issue Cease and Desist Order to respondent no 2 to 4 to stop and desist charging fee paid to its advocate from petitioner no. 1 & 2 and to delete the amounts already charged in the bills along with the interest issued to the petitioner no. 1 & 2 and also directions may be issued not to include such amounts in the bills issued to the petitioners in future and also issue upto date receipts for payments made by the petitioners.

e. To direct respondents no.2 to 4 to delete the aforesaid resolutions passed In the general body meeting held on 22.03.2015 as agenda Item no. 9 and & agenda Item nos. 14 & 15 In the meeting held on 24.09.2017.

f. To award cost of Rs. 2.00,000/- (Rs.Two Lakhs) In favour of the petitioners to cover litigation expenses and also towards mental agony and harassment by the respondent society and Its office bearers.

g. To pass any other or further orders as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the case and in favour of petitioners.”

2. Having heard learned counsel for the petitioners and looking to the facts and circumstances of the case, it appears that the petitioners have grievance against the Cooperative Society, especially about the Resolution passed by the Cooperative Society in the General Body Meeting dated 22nd March, 2015, which has been reproduced in paragraph 5 to the memo of this writ petition. Second grievance has also been ventilated by the petitioners about the Resolution dated 24th September, 2017 passed by the Cooperative Society.

3. The petitioners have also challenged a communication dated 22nd November, 2019 of Assistant Registrar of the Government of NCT of Delhi, Office of Registrar Cooperative Societies.

4. Looking to the provisions of Delhi Co-operative Societies Act, 2003 (hereinafter referred to as “the Act”) and the Rules made thereunder, an efficacious alternative remedy is available with the petitioners under Section 70 of the Act. Office of Registrar, Cooperative Societies has requested the petitioners to avail the claim under Section 70 of the Act; so that, arbitration can take place and the disputes can be resolved. We see no reason to entertain this writ petition, looking to the aforesaid communication dated 22nd November, 2019. The said communication is absolutely in consonance with the provisions of the Act and the Rules made thereunder. Much has been argued out by the learned counsel for the petitioners that the challenge of the petitioners to the Resolutions of the Cooperative Society dated 22nd March, 2015 as well as 24th September, 2017 are not covered by Section 70 of the Act. We are not in agreement with this contention canvassed by the

counsel for the petitioners, mainly for the reason that looking to the provisions of Section 70 of the Act, this dispute is about the management and the business of the Cooperative Society, which is covered by Section 70 of the Act. For the ready reference Section 70 of the Act reads as under:

“70. Disputes which may be referred for arbitration.

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the cooperative society or its committee against a paid employee of the co-operative society arises –

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the co-operative society, its committee or any officer, agent or employee of the co-operative society or liquidator, past or present; or

(c) between the co-operative society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the co-operative society; or

(d) between the co-operative society and any other co-operative society, between a co-operative society and liquidator of another co-operative society or between the liquidator of one

co-operative society and the liquidator of another co-operative society;

Such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such disputes.

(2) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

(3) The Registrar shall decide the aforesaid question within a period of ninety days and in case the aforesaid question, as enumerated under sub-section (2) is not decided within the stipulated period of ninety days, the dispute shall be deemed to have been admitted under section 70 of this Act and the same shall be referred for decision under section 71.

(4) (a) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under sub-section (1) shall –

(i) when the dispute relates to the recovery of any sum including interest thereon due to a co-operative society by a member thereof, be computed from the date on which such member dies or ceases to be member of the co-operative society, be three years;

(ii) save as otherwise provided in sub-clause (iii), when the dispute relates to any act or omission on the part of any of the

parties referred to in clause (b) or clause (c) of sub-section (1), be six years from the date on which the act or omission with reference to which the dispute arose or took place;

(iii) when the disputes relates to a co-operative society which has been ordered to be wound up under section 95 or section 96 or section 97 or in respect of which an administrator has been appointed under section 37, be six years from the date of the order issued under section 95 or section 96 or section 97 or section 37, as the case may be; and

(iv) when the dispute is in respect of an election of an officer of a co-operative society be thirty days from the date of the declaration of the result of the election.

(b) The period of limitation in the case of any other dispute except those mentioned in the foregoing clause which are required to be referred to the Registrar shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute was a suit and the Registrar a civil court.

(c) Notwithstanding anything contained in clauses (a) and (b), the Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.

(5) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitrations under this Act, as if proceedings for

arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.”

(Emphasis supplied)

5. In view of the aforesaid provision of law, the dispute raised by the petitioners is covered under Section 70 of the Act, which is about the management and business of the cooperative society. Hence, there is no substance in this writ petition. The dispute raised in this writ is referable under Section 71 of the Act to the arbitration. Thus, the communication dated 22nd November, 2019 (Annexure A-21) is absolutely in consonance with the provisions of Sections 70 and 71 of the Act. Learned counsel for the petitioners further submits that looking to the Annexure A-20, there will be contradiction between Annexure A-21 and the Resolution dated 22nd March, 2015 passed by the Cooperative Society. This contention of learned counsel is also covered under Section 70 of the Act. Hence, this can also be referred under Section 70 of the Act for arbitration. Therefore, we see no reason to interfere with the communication dated 22nd November, 2019 (Annexure A-21).

6. Hence, there is no substance in this writ petition and the same is hereby dismissed.

CM Appl. No. 9022/2020

In view of the order passed in the writ petition, this application is disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J.

MARCH 06, 2020

r.bararia