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

+ **FAO (COMM) 139/2021 & CM APPLs. 31945-31946/2021**

DEEPAK SHARMA & ANR.

..... Appellants

Through **Mr. Rakesh Kumar, Advocate.**

Versus

SRINIWASPURI MITRA MANDAL CGHS LTD & ANR.

..... Respondents

Through **Mr. Devesh Singh, ASC
GNCTD with Mr. Manas
Bhatnagar, Advocate for R-2.**

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Date of Decision: 16th September, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

The hearing has been done by way of video conferencing.

1. Present appeal has been filed challenging order dated 01st September, 2021 passed by learned District Judge, Commercial Court, North West District, Rohini, Delhi in OMP (I) (COMM) 209 of 2021, whereby the Petition of the appellants filed under Section 9 of the Arbitration and Conciliation Act, 1996 was dismissed as being barred under Section 132(1)(c) of Delhi Co-operative Societies Act, 2003. Appellants also seek to challenge the orders dated 14th November, 2019 passed by the respondent No. 1, Srinivaspuri Mitra Mandal,

CGHS Ltd., whereby the memberships of the appellants of the society were ceased for a period of three years.

2. Learned counsel for the appellants states that the court failed to appreciate that Section 5 of the Arbitration and Conciliation Act, 1996, gives the said Act, an overriding power over Section 132 of the Delhi Co-operative Societies Act, 2003. He further states that the Court wrongly interpreted the provisions of Section 71(5) of the Delhi Co-operative Societies Act, 2003 and overlooked Rule 87 of the Delhi Co-operative Societies Rules, 2007. He also states that the court failed to appreciate that the Appellants had already filed an application dated 05th August, 2021 before the Respondent No.2, Registrar, Cooperative Societies, for the reinstatement of their memberships, which has not been decided till date.

3. Having heard learned counsel for the appellants, this Court finds that admittedly the Dispute Resolution Mechanism relied upon by the appellant is contained in the Delhi Co-operative Societies Act, 2003.

4. It is settled law that ouster of jurisdiction of a Civil Court can be established if there is an express provision of law or is clearly implied.

5. In the present case, the jurisdiction of the Civil Court is explicitly barred under Section 140 of the subsequent act i.e. Delhi Co-operative Societies Act, 2003 which reads as under:-

“140. Act to override other laws.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.”

6. Further, Section 132(1)(c) of Delhi Co-operative Societies Act, 2003 specifically bars the jurisdiction of Civil Courts in respect of any dispute required under Section 70 to be referred to the Registrar.

7. Section 70(5) of Delhi Co-operative Societies Act, 2003 specifically stipulates that save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 shall apply to all arbitrations under this Act. Consequently, the legislature was well aware of the prior Arbitration and Conciliation Act, 1996 and has provided that the Arbitration and Conciliation Act, 1996 shall apply to all arbitrations under this Act except as otherwise provided. Accordingly, Section 5 of the Arbitration and Conciliation Act, 1996 can have no overriding effect over Section 132 of the Delhi Cooperative Societies Act, 2003.

8. In any event, the Delhi Co-operative Societies Act, 2003 by providing an alternative Dispute Resolution Mechanism has by necessary implication ousted the jurisdiction of the Civil Court. Moreover, in the event if there has been any delay in disposal of application by the appellants for reinstatement of their memberships, the appellants have to seek their remedies under Delhi Cooperative Societies Act, 2003 and not by filing a petition under Section 9 of the Arbitration and Conciliation Act, 1996.

9. Consequently, we find no error in the impugned order. Accordingly, the present appeal along with pending applications is dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 16, 2021
AS

