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

Date of Decision: 31st January, 2023

+ **W.P.(C) 1859/2021 and CM APPL. 5373/2021**

AMIT JOSHI & ANR. Petitioner

Through: Mr. Ankur Singhal, Advocate.

versus

GOVERNMENT OF NCT DELHI & ORS. Respondents

Through: Mr. Rishikesh Kumar, ASC with Ms. Sheenu Priya, Mr. Sudhir and Mr. Aditya Raj and Mohd. Zaid, Advocates for R-1 (M: 9873766218). Mr. S.K. Sharma, Advocate along with Sh. Masood Hussain AR for R-3.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The Petitioner in the present case challenges the impugned Recovery Notices dated 28th November, 2020 issued by the Tehsildar, Dadri calling upon the Petitioner to pay various sums of money towards dues under RC Nos. 136 of 2020-21, 137 of 2020-21 & 138 of 2020-21.
3. The petition arises out of three arbitral awards passed under Section 71 of the Delhi Co-operative Societies Act, 2003 (*hereinafter, "the Societies Act"*). The said awards were all passed on 20th December, 2019 directing the Petitioners herein, to pay a sum of Rs.27,11,978/-, Rs.37,46,969/- and Rs.38,91,079/- respectively.

4. The case made out by the Petitioners initially as recorded in the order dated 11th February, 2021 in this petition was that the Petitioners made applications before the Respondent No.2 - Registrar of Cooperative Societies seeking inspection of the records so as to be able to challenge the awards passed against them. However, the said inspection was not permitted. The Respondent No. 1 - GNCTD and Respondent No.2 - Registrar of Cooperative Societies, also did not provide the Petitioners the complete set of papers. Under such circumstances, this Court vide the said order dated 11th February, 2021 had directed that the Petitioners shall be given an inspection of all the records. On the said date, it was also directed that no coercive steps shall be taken for recovery of the amounts from the Petitioners.

5. Pursuant to the said order, the pleadings by the parties have been completed. Mediation was also explored, however, the same did not fructify.

6. A perusal of the pleadings by the parties shows that a complaint was filed by Respondent No.3 - C.A. Co-Operative Thrift & Credit Society Limited before the Registrar of Cooperative Societies on the ground that various amounts were taken as loan by the Petitioners which were not repaid. In the said matter, the Petitioners were issued notice by the Id. Arbitrator appointed under Section 70 of the Societies Act. The Id. Arbitrator had issued summons to the Petitioners in November, 2019. Paragraph M of the writ petition admits that the summons were received.

7. Since the Petitioners did not appear before the Id. Arbitrator, the Id. Arbitrator gave one more opportunity on 6th December, 2019 and when finally on 20th December, 2019 there was no appearance, awards were passed by the Id. Arbitrator.

8. According to the Petitioners, they were not aware of the passing of the said awards and thus could not challenge the same. Thereafter, pursuant to the said awards, the impugned Recovery Notices dated 28th November, 2020 were issued by the concerned Tehsildar, Dadri which are now subject matter of this writ petition.

9. Today, Id. counsel for the Petitioners submits that he has been allowed to inspect the complete record, some part of which has now been filed with the rejoinder. Id. Counsel submits that the initial loan was to be of Rs.55,00,000/- but only Rs.50,00,000/- were released to the Petitioners. He further submits that the Petitioners are willing to amicably resolve the disputes with the Respondents.

10. On the other hand, Id. Counsel for the Respondents submits that orders passed under Section 71 of the Societies Act are appealable to the Delhi Cooperative Tribunal under Section 112 of the Societies Act. The said Tribunal as per Id. Counsel for the parties is currently functioning. He further submits that the Petitioners were duly served in the matter and had knowledge of the proceedings but chose not to file a defense before the Id. Arbitrator. Under such circumstances, the awards have been passed. He further submits that the interim order dated 11th February, 2021 passed by this Court has been obtained on pretext that inspection of record was not given.

11. It is observed that, the entire record has now been inspected by the Petitioners and the said grievance of non-availability of the records, stands resolved. A perusal of Section 112 of the Societies Act shows that any decision or award made under Section 71 is appealable within 60 days to the Delhi Cooperative Tribunal. The said provision reads:

“112(1) Subject to the provisions of Section 113, an appeal shall lie under this Section against-

xxx

(k) Any decision or award made under Section 71

xxx

(2) An appeal against any decision or order under sub-section (1) shall be made within 60 days from the date of decision or order-

(a)if the decision or order falls under clauses (d),(f),(g)(h)(i)(j)(k) and (m) of sub-section (1), to the Tribunal;”

Thus the Petitioners have a clear remedy under the Societies Act which they ought to avail. Clearly, at the time when the writ petition was entertained the allegation was one of violation of the principles of natural justice, which is now not borne out from the record, as the Petitioner had notice of the proceedings in the Complaint.

12. Considering the fact that the Petitioners admit receipt of the loan amount which is not repaid, and have also enjoyed an *interim* protection in this case for almost two years when there is a clear alternate remedy, the following directions are issued:

- i) The Petitioners are permitted to approach the Delhi Cooperative Tribunal within 30 days. If the said appeals are filed within 30 days, the same shall not be dismissed on the ground of limitation.
- ii) The Delhi Cooperative Tribunal shall entertain the said appeal subject to the Petitioners paying 50% of the principal amount i.e. Rs.25,00,000/- to the Respondent No. 3 prior to the first listing before the Delhi Cooperative Tribunal.
- iii) Subject to the said deposit being made, the appeal/s challenging the awards dated 20th December, 2019 passed by the Id. Arbitrator

shall be heard and adjudicated in accordance with law.

iv) The Tribunal shall adjudicate the appeal within three months from the date of first listing.

v) During the said period, the complaints under Section 138 of the Negotiable Instruments Act, 1881 filed by the Respondent, shall be adjourned at the request of the parties.

13. It is clarified that this Court has not gone into the merits of the matter or the validity of the awards passed by the Arbitrator.

14. The Delhi Cooperative Tribunal shall adjudicate the matter without being affected by the observations in any of the orders passed in this writ petition.

15. With these above observations, the present petition with all pending applications, if any, are disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 31, 2023
MR/kt