



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

% Date of decision: August 8, 2023

+ W.P.(C) 10392/2019, CM APPL. 42861/2019

KISHAN LAL

..... Petitioner

Through: Mr. Setu Niket, Adv. with
petitioner in person

versus

SANT SUNDER DAS JI CGHS LTD. & ORS. Respondents

Through: Mr. Sashi Bhushan Upadhyay, Adv.
for R-1

Ms. Varsha Sharma, Adv. for
Mr. Jawahar Raja, ASC (Civil),
GNCTD for R-2

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

1. The challenge in this petition is to an order dated March 19, 2019 passed by the Delhi Co-operative Tribunal in Appeal No. 196/2018/DCT whereby the Tribunal has disposed of the appeal by stating in paragraphs 14 to 19 as under:

14. In the reply filed before this Tribunal, the R1 has not controverted the pleadings and assertions made by the appellant society. He has also not stated that he has not resigned or has not received the refunded amount of Rs.1100/- vide cheque No. 003852. The impugned award does not disclose about production of relevant documents. The onus to prove the claim was on the claimant. There is no finding of Ld. Arbitrator whether or not the R1 had resigned from the membership nor there is any finding that R1 has not received the refund of Rs.1100/- through cheque



no. 003852 Ld. Arbitrator has drawn adverse inference with the observation that the appellant, the defendant therein did not place on record the documents as mentioned in para "A".

15. It is well settled that the onus to prove the claim is on the person who prefers the claim and only when the claimant proves his right, title or interest according to the claim, the onus to disprove shifts on the opposite side. However, Ld. Arbitrator in the present case has drawn adverse inference by recording that Sh. R.K. Gupta, Junior advocate of the society verbally informed that the society had not provided any record in this regard and junior advocate for the society remained absent during the hearings on 14.8.2014 and 25.8.2014. Therefore, Ld. Arbitrator passed the impugned award.

16. It is pertinent to note that the management of the society was under the administration of Administrators during different period, as appointed by Ld. RCS. The advocate for defending the society must have been appointed by the Ld. Arbitrator and if the advocate had not filed the documents or had absented from the proceedings, he could have issued notice to the Administrator asking him to transmit the documents if any, who in turn would have deputed the advocate with instructions. Since there was no M.C. in existence, the claim was not properly defended. The impugned award has been passed by drawing adverse inference against the society for non production of the documents without verifying from the account of the society whether the amount of Rs. 1100/-refunded vide cheque No. 003852 on resignation of the respondent.

17. In our considered view the impugned award has been passed on by drawing adverse inference against the society and is illegal and suffers from impropriety as such is liable to be set aside. The appeal is therefore accepted, impugned award is set aside. The matter is remanded back to the RCS for assignment to new Arbitrator other than who passed the impugned award who shall dispose of the award as per law.



Parties are directed to appear before the RCS on 3.4.2019 at 3.00 p.m

18. The RCS shall allocate the matter to some other arbitrator (other than the one who had passed the impugned award).

19. It goes without saying that the Ld. Arbitrator to whom the matter is allocated shall dispose off the matter within the prescribed time period. The Ld. Arbitrator to whom the matter is allocated should, in its proceedings, specifically mention as to which party is seeking the adjournment. Further the adjournment be not granted on flimsy grounds.”

2. The appeal before the Tribunal was filed by the Society challenging the order passed by the learned Arbitrator under Section 71 of the DCS Act dated August 28, 2014. The ground of challenge before the Tribunal was that the award was *ex parte* allowing the petitioner herein to continue as a member of the Society.

3. The membership was obtained by the petitioner herein by showing an address of a plot which was not a residential address. No document was filed by the petitioner at any stage of the proceedings, such as the copy of the receipt on account of deposit of membership fee and share money or copy of the share certificate or any other document in support of his claim for membership. In other words, the challenge of the Society was that the petitioner herein, who was respondent No.1 before the Tribunal has never been a *bona fide* member of the Society and had merely deposited a sum of ₹1,100/- including membership fee and share money. He resigned on June 27, 1996 which was duly approved by the



Management Committee and the amount of ₹1,100/- was refunded vide cheque no. 003852 which was duly encashed and debited to the account of the Society as verified from the bank statement.

4. Further it was stated that petitioner had woken up after 22 years when there has been an appreciation in the cost of the flat to pressurize the management with dishonest intention and for wrongful gain. In other words, the claim of the petitioner was barred by limitation.

5. The attack on the award was that the learned Arbitrator had not considered the material on record while rendering the award.

6. The case of the petitioner before the Tribunal was that the Society, i.e., respondent No.1 herein has not stated the facts correctly. It had taken baseless allegations and as such the society should be held accountable for committing cheating, forgery and criminal breach of trust.

7. On the last date of hearing, we had passed the following order:

“ The petitioner, who appears in person, states that his counsel is not interested to pursue the matter. It was put to the petitioner, whether he would be agreeable for appointment of an Advocate by the Court, he is unable to answer.

We deem it appropriate to appoint Mr. Setu Niket, Advocate who is present in the Court, as amicus curiae to assist the Court in this matter.

Registry shall give the complete record of the matter to Mr. Setu Niket (Mob. No. 9873109672) within one week from today.

Counsel for RCS shall also be present on the next date of hearing.”



8. Mr. Setu Niket, learned Amicus Curiae appearing for the petitioner would submit that the order of the Tribunal is cryptic and was passed without considering the relevant facts on record and against the principles of natural justice. He submits that when the society has failed to submit the relevant documents, there is no alternative for the Arbitrator but to grant the relief in favour of the petitioner. It is also his submission that it appears to be a case where the relevant provision of the rules have been violated while considering the so-called resignation tendered by the petitioner herein. Unfortunately the Tribunal has only stated that the onus of proving the claim is on the person who prefers the claim and only when the person proves his right, title or interest according to the claim, would the onus to disprove it shift to the opposite side.

9. According to him, the Tribunal under the provisions of the Act and Rules while exercising an appellate jurisdiction should have called for the record of the Arbitrator and come to a conclusion about the legality of the award passed by the Arbitrator. In other words, the Arbitrator should have considered the facts and law while deciding the appeal before it. He submits the Tribunal has failed to appreciate that on the basis of the documents filed on its record, the so called resignation of the petitioner could not have been proved. He also submits the so-called statement on which reliance has been placed by the society, it cannot be held the same is a bank statement of the society to hold that the petitioner has encashed the cheque given to him.



10. On the other hand, learned counsel appearing for the Society only states that the petitioner has encashed the cheque which was given to him and hence the challenge is not sustainable. Similar submissions have been made by the counsel for the RCS.

11. Having considered the facts and seen the impugned order passed by the Tribunal, the same is cryptic and unreasoned. The Tribunal should have considered the arbitral record and the documents filed before it and passed a more detail order justifying its conclusion. Not having done that, we are of the view the matter needs to be remanded back to the Tribunal for a fresh consideration, ensuring that the arbitral record is produced by the Society before it. The Tribunal shall consider the same and decide the appeal in accordance with law, but within a period of three months as an outer limit. It is made clear, while considering the original record of the arbitrator, a copy of the same should be given to the counsel for the parties for their perusal and to facilitate, their submissions. Failure to produce the arbitral record by the Society, shall lead to an adverse inference.

12. With the above, the petition is disposed of.

CM APPL. 42861/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

AUGUST 08, 2023/jg