



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

%

Date of Decision: July 05, 2023

8

+

W.P.(C) 2740/2015

SURESH CHAND JAIN

..... Petitioner

Through: Mr. R.K. Gupta, Advocate.

versus

PHARMACEUTICAL EMPLOYEES

CGHS LTD.

..... Respondent

Through: Mr. Dilip Singh and Ms. Raj Lakshmi,
Advocates for R-1.
Ms. Shobhana Takiar, Advocate for
R-3/DCHFC.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

1. This petition has been filed by the petitioner with the following prayers:

“(a) Issue a writ, order or direction in the nature of certiorari thereby quashing the order dated 30.7.2014 passed by Delhi Cooperative Tribunal in Appeal No.36/2010/DCT and also the Award dated 9.1.2010 passed by the Arbitrator U/s. 71 of the Act;

(b) Directions may also be issued to the society to refund Rs.40,000/- as charged by way of Entry Fee with interest or the same may kindly adjusted against the future maintenance



charges;

(c) Issue a writ, order or direction in the nature of mandamus thereby directing the Registrar to complete the recovery proceedings initiated under Section 59 of Delhi Cooperative Societies Act, 1972 within a stipulated period;

(d) Issue a writ, order or direction as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case;

(e) Cost of the proceedings may also be awarded."

2. In substance, the challenge in this petition is to an order passed by the Delhi Co-operative Tribunal ('DCT', in short) in Appeal No. 36/2010/DCT and also the award dated January 09, 2010 passed by the learned Arbitrator under Section 71 of the Delhi Co-operative Societies Act, 2003.

3. The grievance of the petitioner before the learned Arbitrator was two-fold. One with regard to the claim of Rs. 40,000/- as a refund from the society, which was paid by the petitioner at the time of entry to take possession of the flat in question. The second grievance is with regard to a claim of Rs. 61,257/- by the society pursuant to a loan of Rs. 1.6 crores taken by the society from DCHFC, i.e. respondent No. 3 herein.

4. The brief facts are that one S. K. Arora was the member of the society being Pharmaceuticals Employees CGHS Ltd. He was allotted flat No. B-17/211. The petitioner purchased the said flat from S. K. Arora vide a GPA dated May 28, 1999. Thereafter, the society had demanded Rs. 40,000/- as an entry fee from the petitioner.

5. The case of the petitioner was that, he has been forced to pay the



amount on July 07, 1999. With regard to the loan amount, it was the case of the petitioner that, as the petitioner had paid the complete amount to S. K. Arora, he was not liable to pay any loan amount taken by the society.

6. Whereas, the case of the society was that, it had taken loan from DCHFC/respondent no. 3 and the refunds were utilized in construction of the flats and the members were asked to share the burden of the past liability equally to avoid further accumulation of interest. It was also the case of the Society that the membership of the flat was transferred in the name of the petitioner on April 08, 2007 after the petitioner gave an affidavit that, he would pay the amount, if any, against the original member as and when asked and certified by the society.

7. The learned Arbitrator held that the petitioner is liable to pay an amount of Rs. 61,257/- against the loan taken by the society from the respondent No. 3. In so far as the dispute with regard to the claim of the society to pay the refund of the entry fee of Rs. 40,000/- is concerned, the learned Arbitrator took a view that the said claim is barred by time.

8. The DCT while rejecting the appeal filed by the petitioner, in paragraphs 10, 11 & 12, has stated as under:

“10. The society is claiming that the entry fee was not paid by the appellant. The membership in his name had been transferred on 08/04/2007. Copy of the affidavit of the appellant dated 31/03/2007 shows that he had agreed to clear the liability, if any, against the original member, in respect of the dues towards the society.

11. The appellant is placing reliance on the receipt no.457 dated 07/07/1997. A perusal of the receipt reveals that the amount had been paid by Sh. Arora and not by the appellant. Therefore, the claim of the appellant that he had paid the amount of Rs.40,000/- through cheque on



07/07/1999 vide receipt no.457 is factually incorrect. Sh.Arora is not seeking refund of the amount.

12. The appellant has not disputed the fact that the membership had been transferred to him on 08/04/2007. Therefore whatever was due and outstanding prior to his becoming a member of the society were recoverable from Sh. Arora. The NOC had been issued on 01/04/1999 to Sh. Arora. The amount sought by the society was because of issuance of recovery certificate dated 26/05/2008 by the Assistant Collector, Gr-1. It is not in dispute that the loan had been taken by the society on behalf of the members. Therefore, the balance amount was required to be paid by the members.”

9. In so far as the claim of the loan amount by the society, which was quantified as Rs. 61,257/- by the learned Arbitrator is concerned, as noted above the submission of Mr. Gupta is that, when the petitioner had made complete payment of the flat and had not taken the loan as advanced by the respondent no.3, he is not liable to pay the said amount to the society.

10. The submission of Mr. Gupta is contested by Mr. Dilip Singh, learned counsel appearing for the society i.e. respondent No. 1, by relying upon the judgment in the case of ***Veena Mahajan vs. The Registrar, Office of the Registrar of Cooperative Societies and Ors., W.P.(C) 5942/2013*** and connected petitions decided on September 11, 2017, wherein on an identical issue, the challenge by similarly placed persons, this Court negated the challenge in paragraphs 1, 2, 3, 7, 8, 9, 10, 11, 12 & 13, as reproduced as under:

“1. By this common order, we propose to dispose of the present petitions filed by the petitioners, who are not the original members of the respondent No.2/Society, but have purchased flats in the said Society on second sales from the original members. In each case, the petitioners have sought



quashing of demand letters issued by the respondent No.2/Society, calling upon them to pay their respective share of the apportioned amount under the individualization scheme. For ready reference, the dates of the demand letters issued in respect of each of the petitioners and the amounts demanded, as per the documents filed with the petitions, are set out as below:-

Sr. No.	Petition No.	Name	Date of the Demand Letter	Amount demanded
1.	W.P.(C) 3942/2013	Smt. Veena Mahajan	01.08.2013	Rs.1,22,871/-
2.	W.P.(C) 8094/2013	Smt. Manu Chopra	01.08.2013	Rs.1,22,871/-
		Shri Vinod Kumar Chabra	10.08.2013	Rs.1,94,901/-
3.	W.P.(C) 2737/2014	Dr. V.M. Surwade	No document filed	Rs.1,41,951/-
		Shri Krishan Kumar Chopra	- do -	Rs.1,41,951/-
		Smt. Saroj Malpani	- do -	Rs.1,41,951/-
		Smt. Veena Mahajan	- do -	Rs.1,41,951/-
		Sri Vijender Kumar	-do-	Rs.1,41,951/-
		Shri Ajay Batra	-do-	Rs.1,41,951/-
		Shri Deepak Kapoor	10.09.2013	Rs.1,41,951/-
		Smt. Renu Chhabra	10.08.2013	Rs.1,41,951/-

2. Mr. Jitender Kumar, learned counsel for the petitioners argues that the individualization scheme is applicable only to those members of the Society, who had obtained loans from the respondent No.3/Delhi Co-operative Housing Finance Corporation Ltd. (in short '**DCHFC Ltd.**') but the petitioners having not obtained any loan, cannot be called upon to pay any amount under the individualization scheme.

3. Mr. Dilip Singh, learned counsel for the respondent No.2/Society states that several rounds of litigation have taken place between different members of the Society and the Society and the first round of litigation had commenced somewhere in the year 2000-2001. In December, 2000, the respondent No.3/DCHFC Ltd. had filed a petition under Section 60 of the Delhi Cooperative Societies Ltd., 1972 against the respondent No.2/Society and the loanee members, for recovery of Rs.15,26,354/-, as on 31.12.2000. Vide Award dated 24.01.2001, the learned Arbitrator had referred to the



following four categories of members as drawn by the Society:-

- (1) those who have paid fully*
- (2) those who are paying according to schedule*
- (3) those who are dead*
- (4) those who are defaulters.*

xxxxxxx

xxxxxxx

xxxxxxx

7. It is an undisputed position that the respondent No.2/Society had defaulted in refunding the loan amount to the DCHFC Ltd. As a result, DCHFC Ltd. had to approach the respondent No.1/RCS by filing an application under Section 84(1) of the Delhi Cooperative Societies Act, 2003, for issuance of a Certificate for a sum of Rs.1,34,79,105/- alongwith the interest. Accordingly, the Assistant Collector, Cooperative Societies had issued a Certificate dated 26.05.2008, certifying inter alia that a sum of Rs.1,34,79,105/- was outstanding as arrears as on 30.09.2006, including recall of the loan amount against the debtors, jointly and severally.

8. In the year 2010, one of the members of the respondent No.2/Society, Mr. M.S. Chawla had filed a writ petition in this court against the respondent No.2/Society, registered as W.P.(C) 3384/2010 wherein an order dated 18.05.2010 was passed by the Division Bench, as below:-

“The Society lost an arbitration award and contested the same right till the High Court unsuccessfully. The consequence is that certain amounts have to be paid to the finance company and the amount to be so paid is being apportioned between different members who are occupants of flats.

In the aforesaid position the petitioner, a member of the Society and occupant of a flat cannot be permitted to claim that he is not entitled to pay his share of the apportioned amount because he had earlier cleared all the dues.

Dismissed.”

9. After about three years, six other members of the respondent No.2/Society including the petitioner in W.P.(C)



5942/2013 and the petitioner No.1 in W.P.(C) 8094/2014 had jointly filed a writ petition in the High Court, registered as W.P.(C)281/2013 praying inter alia that the respondent No.2/Society be called upon to come up with the correct amounts payable by individual members towards the liability of the Society and thereafter, release the mortgage of the flats of the members, who had paid their shares. The aforesaid petition was disposed of by the Division Bench on 06.05.2013, by passing the following order:-

“ The petitioners, who are members of R-2/Society, are claiming that there continues to be a clog on their property on account of the loan availed of by R-2/Society from R-3/Bank even though the petitioners have cleared their loans and / or are willing to clear any outstandings. It was in these circumstances that we had called upon R-3/Bank to find out as to whether the individualization scheme can be applied to the members of the R-2/Society.

We are informed that, in fact, the said Scheme has already been availed of by the Society and the individual outstandings have been communicated to the members on the clearance of which they can get a No Due Certificate.

To put an end to the controversy, we once again call upon the R-2/Society to intimate the outstandings qua the petitioners as per the individualization scheme to the learned counsel for the petitioner within a week from today.”

10. It was after the aforesaid order came to be passed that the respondent No.2/Society had issued the impugned demand letters, calling upon individual members to pay the amounts as specified therein.

11. Learned counsel for the respondent No.2/Society states that the amounts demanded from the individual petitioners in the present case are not only towards the shortfall of the money payable to DCHFC Ltd., but also on account of diversion of the loan amounts received by the Society from various members for payment to the DCHFC Ltd., but utilized



towards construction activity/development purposes of the Society.

12. In view of the fact that the petitioner in W.P.(C)5942/2013 and one of the petitioners in W.P.(C) No.8094/2013 had themselves approached the Court on an earlier occasion, seeking directions to the respondent No.2/Society to come up with the correct amounts payable by individual members and vide order dated 06.05.2013 passed in W.P.(C) 281/2013, appropriate directions were issued in this regard, the petitioners herein cannot be permitted to re-agitate the issue and try to unsettle matters that have been satisfactorily resolved. The order dated 6.5.2013 has attained finality and is binding on all similarly placed members of the Society.

13. Given the above background, we are not inclined to interfere in the impugned orders passed by the respondent No.2/Society, calling upon the individual members to pay quantified amounts, as demanded from them. However, in the interest of justice, the petitioners are granted a period of six weeks to clear the said amounts, failing which the respondent No.2/Society and the DCHFC Ltd. shall be at liberty to seek legal recourse against the defaulting petitioners and/or the Society.

14. The petitions are dismissed. No orders as to costs.”

11. We have been informed that this petition was also listed along with the above said petitions but could not be heard along with those petitions as the counter affidavit was not filed. In any case, we find that the Court had not interfered with the orders issued by the respondent No. 2 society calling upon the individual members to pay the quantified amounts as demanded from them and in that regard, six weeks were granted by this Court.

12. If that be so, we are inclined to accept the conclusion arrived at by the DCT in that regard. In so far as the entry fee is concerned, the learned Arbitrator and the DCT have rejected the claim on the ground that the same was barred by time. We agree with the said conclusion inasmuch as, it is a



conceded position that the amount of Rs. 40,000/- was paid to the society on July 07, 1999 and the claim was made only in the year 2009 and as per Section 70(4) of Delhi Co-operative Societies Act, 2003, the limitation being of six years from the date the cause of action has arisen, the claim made in the year 2009, was barred by time.

13. So, the two submissions made by Mr. Gupta being without merit, the petition is dismissed. No Cost.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

JULY 04, 2023/akc

सत्यमेव जयते