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

+ **W.P.(C) 1682/2023 and CM APPL. 6426/2023**

DELHI ADVERTISING CGHS LTD Petitioner

Through: **Mr. G. L. Verma, Advocate**

versus

GOVT OF NCT OF DELHI & ORS. Respondents

Through: **Mr. Anupam Srivastava, ASC,
GNCTD with Mr. Anushka
Bhatnagar, Advocate.
Mr. Ankur Arora, Advocate for
respondents No.2, 3, 4 & 6.**

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Date of Decision: 7th February, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. The present writ petition filed under Article 226 of the Constitution of India has been filed by Delhi Advertising CGHS LTD ('Petitioner or Society') seeking to set aside the order dated 27th January, 2023 passed by Delhi Cooperative Tribunal ('Tribunal') under the Delhi Cooperative Societies Act, 2003 ('Act of 2003') and arbitral award dated 23rd March, 2015. The arbitration proceedings were initiated by Respondent Nos. 2 to 6 under Section 70 of the Act of 2003 to restrain the Petitioner Society from interfering in the peaceful possession of Flat No. 284 in Vigyapan Lok at 15,



Mayur Vihar-1 Extn, Delhi- 110091 ('subject flat').

1.1. The facts of the case to the extent relevant for the present writ petition are that late Mr. Mahesh Belwal, the predecessor-in-interest of Respondent Nos. 1 to 5 and Mr. B.D Belwal, i.e., Respondent No. 6 herein were cousins and members of the Petitioner Society.

1.2. Late Mr. Mahesh Belwal was allotted flat No. 111 in the Society by Delhi Development Authority ('DDA') on 13th March, 2002. Another member of the Society namely Captain Chitranjan Jain was allotted flat No. 244 in the Society on 01st August, 2002 by DDA. Thereafter, late Mr. Mahesh Belwal and Captain Chitranjan Jain applied to DDA for mutually exchanging their flat Nos. 111 and 244, which was allowed by DDA vide order dated 16th August, 2002. Accordingly, the ownership of flat No. 244 was transferred in the name of late Mr. Mahesh Belwal.

1.3. Separately, Mr. B.D. Belwal was allotted subject flat No. 284 by DDA on 01st August, 2002. The possession of subject flat No. 284 was handed over to Mr. B.D. Belwal on 02nd August 2002. Subsequently, late Mr. Mahesh Belwal and Mr. B.D Belwal as well applied to DDA for mutually exchanging their flats Nos. 284 and 244, which exchange was allowed by DDA vide order dated 06th January 2003 and a conveyance deed as well was executed in favour of late Mr. Mahesh Belwal on 11th July 2023. Consequently, late Mr. Mahesh Belwal acquired occupancy rights in respect of the subject flat No. 284.

1.4. In the year 2007, disputes arose between the Petitioner Society and late Mr. Mahesh Belwal with respect to the possession of subject flat No. 284, when late Mr. Mahesh Belwal was undertaking construction/finishing work in the subject flat. The Petitioner Society disconnected the water and



electricity supply of the subject flat.

1.5. Mr. Mahesh Belwal expired on 11th November, 2011, the legal heirs of Mahesh Belwal i.e., Respondent Nos. 2 to 5 and Respondent No. 6, B.D Belwal collectively filed a claim petition under section 70 of the Act of 2003 with the Registrar of Co-operative Societies, NCT of Delhi ('RCS') seeking the direction to direct the Petitioner Society to not interfere in the peaceful possession, use and enjoyment of the Claimants i.e. Respondent Nos. 2 to 6.

1.6. The matter was referred to Arbitrator for deciding the claims on merit and award dated 23rd March, 2015 ('impugned award') was passed in favour of Respondent Nos. 2 to 5 directing the Petitioner Society not to interfere in peaceful possession, use and enjoyment by Respondent Nos. 2 to 5 of the subject flat. The impugned award also directed the Petitioner Society to pay damages to the above said Respondents at Rs. 12,000/- per month for denial of possession of the subject flat since 19th September, 2007 and also directed to restore water and power connection to the said subject flat immediately.

1.7. Aggrieved by aforesaid impugned award dated 23rd March, 2015, the Petitioner Society had filed an appeal bearing No. 54/2015/DCT before the Tribunal.

1.8. During the pendency of the appeal, DDA recommended cancelation of the conveyance deed dated 11th July, 2003 executed in favour of late Mr. Mahesh Belwal for the subject flat. The Tribunal concluded that consequently, the rights as it existed prior to exchange of flats between late Mr. Mahesh Belwal and Mr. B.D. Belwal stands restored. The Tribunal held that the occupancy rights of the subject flat in the name of Mr. B.D. Belwal as it existed prior to 06th January, 2003 had come into operation. Thus, the Tribunal upon an application filed by Respondent No. 6 modified the award,



with the consent of Respondent Nos. 2 to 5 and substituted the directions issued in favour of Respondent Nos. 2 to 5 to read as directions to Respondent No. 6, and, the appeal filed by the Society has been dismissed by the impugned order while upholding the impugned award with the aforesaid modifications.

2. Learned counsel for the Petitioner Society states that the impugned award is time barred. He states that the Arbitrator received the reference on 10th December, 2014 and issued notice/summons on 11th December, 2014, however, passed the award on 23rd March, 2015, which is after the prescribed period of three (3) months. He states that the period of 90 days is to be reckoned from the date of receipt of reference by the Arbitrator or at the most from the date of issuing of notice/summons dated 11th December, 2014.

2.1. He states that the Arbitrator and the Tribunal have failed to consider that neither late Mr. Mahesh Belwal nor Mr. B. D. Belwal i.e., Respondent No. 6 was entitled to be the member of the Society under Sections 41 (1) (c) and 87 of the Act of 2003 and hence, their membership was void ab-initio. He states that the exchange of flat Nos. 244 and 284 between late Mr. Mahesh Belwal and Mr. B. D. Belwal was accorded by DDA vide letter dated 6th January, 2003. He states that since at one point of time conveyance deed for both the flat Nos. 244 and 284 was in the name of late Mr. Mahesh Belwal, the Arbitrator ought to have accepted the contention of the Society that late Mr. Mahesh Belwal was illegally holding the subject flat No. 284.

2.2. He states that the conveyance deed of flat No. 284 executed in favour of late Mr. Mahesh Belwal has since been directed by DDA vide letter dated 20th September, 2016 to be cancelled and consequently, the flat stands



reverted in the name of Mr. B. D. Belwal i.e., the original allottee.

2.3. He states that there is no record available with the Society with respect to receipt of costs of flat No. 284. He states that Mr. B. D. Belwal i.e., Respondent No. 6 was not entitled to the allotment of flat No. 284 from inception.

3. In reply, learned counsel for the Respondents states that the relevant date for reckoning the period of limitation for passing the award is 29th December, 2014. He states that the notice/summons were issued for first hearing on 29th December, 2014 and the award has been passed within three (3) months thereof. He states in the alternative, the Court may take note of the applications dated 24th December, 2014 and 29th December, 2014 filed by the Petitioner Society seeking adjournment of the arbitral proceedings before the Arbitrator. He states that the Petitioner Society itself delayed the adjudication of the arbitral proceedings.

3.1. He states that in the arbitral proceedings, the Respondent no. 2 to 6 were the claimants seeking an injunction against the Petitioner Society from interfering in their peaceful possession and use of the subject flat. He states that the possession of the subject flat was handed over by the Petitioner Society in pursuance of the initial allotment made in favour of Respondent No. 6 on 19th July, 2002, which was regularised by DDA vide letter dated 1st August, 2002. He states that the possession was handed over vide possession letter dated 2nd August, 2002. He states that Society has no right to interfere in the possession of the Respondents no. 2 to 5 or disturb their use and enjoyment of the allotted flat, in law. He states that as per the records of the DDA, Respondent No. 6 has been duly allotted the subject flat on 1st August, 2002 and there is no inter-se dispute between Respondent Nos. 1 to



6, if the subject flat continues to remain in the name of Respondent No. 6.

3.2. He states however, the Petitioner Society can have no claim on the subject flat as both late Mr. Mahesh Belwal and Mr. B. D. Belwal were admitted to membership of the Society. He states that the society's defence challenging the validity of the membership of late Mr. Mahesh Belwal or Mr. B.D. Belwal is untenable as admittedly there is no order of the RCS cancelling their membership.

4. This Court has considered the submissions of the learned counsel for the parties and perused the record.

5. The only issue of lack of jurisdiction raised by the Petitioner Society is with respect to the impugned award being time barred. It is admitted on record that the Arbitrator issued notice/summons on 11th December, 2014 and fixed the 1st date of hearing as 29th December, 2014.

6. The Petitioner Society has contended that the Arbitrator is bound to pass an award within statutory period of three (3) months as prescribed under Rule 85 (1) of the Delhi Co-operative Society Rules, 2007 ('Rules of 2007'). The Petitioner Society contends that the starting date for reckoning three (3) months is the date of issuance of summons by the Arbitrator i.e., 11th December, 2014. The Tribunal has negated the submissions of the Society and held that the starting date for reckoning is the first date of hearing fixed by the Arbitrator. In this regard, the Tribunal has relied upon the judgment titled as *Parwana CGHS Ltd. v. The Registrar Delhi Cooperative Tribunal & Ors.* passed by the Division Bench of this Court in *W.P (C) 11095 of 2009* decided on 11th February, 2010, wherein this Court while considering the *pari materia* provision of Rule 89 of the Delhi Cooperative Societies Rules, 1973 ('Rule of 1973') held that the Arbitrator



is said to have entered reference on the first date of hearing fixed before the Arbitrator. The relevant portion of the judgment reads as under:-

*“12. We do not find any merits in this submission of the petitioner. Perusal of **Rule 89** shows that the date on which the reference is made is not prescribed as the starting point of limitation. Reference of disputes is made by the Registrar to the arbitrator. The Arbitrator has no control as to when the communication appointing him the Arbitrator is issued by the office of the Registrar o'. received by him. Therefore, the time taken by the Registrar in communicating his order cannot be included within the period granted to the arbitrator to make the award. Similarly, the Arbitrator cannot proceed unless the parties are put to notice. Therefore, the time consumed in putting the parties to notice would also have to be excluded for the purpose of computing the time available to the arbitrator to make his award. A perusal of the award shows that the arbitrator had issued a notice to the parties to appear before him on 4th November, 2008. Therefore, the date on which the arbitrator entered reference would be 4th November, 2008. The award has been made on 9th January, 2009 i.e. well within the period of three months from the date on which he entered upon the reference. Therefore, this submission of the petitioner is rejected as being without any merit.”*

(Emphasis Supplied)

7. Rule 85(1) of the Rule of 2007 reads as under:-

“85. Award or Decision

*(1) The arbitrator shall make a memorandum of the statements of the parties who attended and of such witnesses as are examined. Upon the evidence so recorded and after consideration of any documentary evidence produced by either party the arbitrator shall make an award in accordance with justice, equity and good conscience. The arbitrator shall record his award, signed and date it within a period of **three months** and shall communicate it to the parties. In case the arbitrator is unable to decide the dispute and make the award within three months, the arbitrator shall seek extension of the period in writing from the Registrar by making an application to him.”*

(Emphasis Supplied)

8. Rule 89 (1) of the Rules of 1973 (as amended w.e.f. 9th September, 1988) reads as under:-

“89. Award or Decision

(1) The arbitrator shall make a memorandum of the statements of the parties who attended and of such witnesses as are examined and upon the evidence so recorded and after consideration of any documentary evidence produced by either party shall make an award in accordance with justice,



*equity and good conscience, he shall record his award, signed and date it within a period of **three months** and shall communicate it to the party concerned. In case the arbitrator is unable to decide the case and make the award within three months he shall seek extension of the period in writing from the Registrar by making an application to him.”*

(Emphasis Supplied)

9. We are of the considered opinion that in view of the aforesaid judgment of the Division Bench and considering the *pari materia* provisions in the Rules of 2007 and Rules of 1973, the period of three (3) months in the facts of the present case is to be reckoned from 29th December, 2014. The impugned award has been passed on 23rd March, 2015 and is therefore, within limitation. Accordingly, the submission of the Petitioner Society on the issue of limitation is rejected.

10. The claim petition filed by the legal heirs of late Mahesh Belwal i.e., Respondent Nos. 2 to 5 and Respondent 6, B.D Belwal before the Arbitrator was for seeking an injunction against the Society to restrain it from interfering in the peaceful possession of the subject flat and for carrying out repair, renovation and alternation in the said flat. The Respondent Nos. 2 to 6 further sought restoration of the water and power connection to the subject flat as well as damages against the Petitioner Society for interfering in the enjoyment of the claimants of said flat.

11. The Tribunal and Arbitrator have returned concurrent findings that the allotment of the subject flat stood regularised in favour of Respondent No. 6 by DDA on 1st August, 2002 and the possession was handed over on 2nd August, 2002. The Tribunal and Arbitrator further held that Respondent No. 6 held Membership No. 178 in the Petitioner Society, which was cleared for allotment by the RCS. In these undisputed facts, the Tribunal held that the Petitioner Society cannot interfere with the possession and enjoyment of the



subject flat, which was in possession of the Respondent Nos. 2 to 5 on the pleas raised in the written statement by Petitioner Society inter-alia challenging the validity of the membership of both Mr. B. D. Belwal i.e., Respondent No. 6 and late Mr. Mahesh Belwal. The Tribunal further held that the membership of the said persons had not been set aside in any manner known to law and more specifically as per Sections 40 and 41 of the Act of 2003. The Tribunal held that in the absence of any legal and binding order of a statutory authority cancelling the membership of Mr. B. D. Belwal i.e., Respondent No. 6 and late Mr. Mahesh Belwal, the Society of its own volition cannot interfere in the peaceful possession of a member. The Tribunal after perusing the record also found no merit in the plea of the Petitioner Society that late Mr. Mahesh Belwal or Mr. B. D. Belwal had ceased to be members in the year 2003. The contention of the Petitioner Society that Respondent No. 6 has not paid any cost for the subject flat was specifically negated by the Arbitrator after opining that the averments in this regard by the Petitioner Society are vague and it has led no evidence to substantiate its allegations in this regard. The Petitioner Society has contended that seven (7) additional flats were constructed unauthorisedly, which was subsequently regularised by Municipal Corporation of Delhi (MCD).

12. The Petitioner Society states that the subject flat is one of the additional flats and made this a basis of its challenge. In this regard, the Tribunal has opined that the Society is selectively challenging the rights of the Respondent Nos. 2 to 6 and no such proceedings have been initiated by the Society against six (6) others allottees of the additionally constructed flats. The Tribunal and the Arbitrator have concurrently held that the



documents on record and the record of the judicial proceedings show that the physical possession of the flat remain with late Mr. Mahesh Belwal and thereafter, with the Respondent Nos. 2 to 6.

13. The Tribunal and the Arbitrator after perusing the evidence placed before it have passed detailed orders recording the aforesaid findings. This Court in its extraordinary jurisdiction under Article 226 of the Constitution does not review or reweigh the evidence upon which the determination of the Tribunal and the Arbitrator is based. We are of the considered opinion that there is no error of law apparent on the face of record in the present proceedings. In the facts of this case, there is no other member of the Society, who has raised a claim to the subject flat. We are also of the opinion that considering that the subject flat was allotted in the year 2002 and two (2) decades have gone by, therefore, the Society would be well advised to put a quietus to this issue.

14. With the aforesaid observations, we find that the present petition is completely devoid of merit and is accordingly dismissed along with pending application.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 7, 2024/hp/ms

Click here to check corrigendum, if any