



2024 : DHC : 966-DB



\$~46

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1726/2024 and CM APPL. 7133/2024, CM APPL. 7134/2024**

LT. COL. BALRAJ ANAND (RETD) Petitioner
Through: Dr. A. K. Bakshi, Advocate along
with Appellant in person.
versus
REGISTRAR, CO-OPERATIVE SOCIETIES & ORS.

..... Respondents
Through: Mr. Udit Malik, ASC (Civil) for
GNCTD with Mr. Vishal Chanda,
Advocate.
Mr. Virender Singh Charak, Sr. Panel
Counsel, Mr. Mimansak Bhardwaj,
Govt. Pleader with Mr. Shubhra
Parashar, Advocate.
Mr. Manish Srivastava, Mr. Moksh
Akora and Mr. Santosh Ramdurg,
Advocates for R-9.
Ms. Monika Tripathy, SC for DDA
with Mr. Rony John and Ms.
Aishwary Jaiswal, Advocates for R-
11.

%

Date of Decision: 6th February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present Petition filed under Article 226 of the Constitution of India seeks following directions for (i) setting aside the entire proceedings conducted by the Registrar of the Co-operative Societies ('RCS') and the



2024 : DHC : 966-DB



Deputy Registrar in the Arbitration Case No. 44/GH/DR/ARB/2021-22/692/693; (ii) setting aside the proceedings initiated by the Petitioner, which are pending before the Delhi Co-operative Tribunal ('DCT' or 'Tribunal') in Appeal No. 128/2022; and (iii) to set aside the arbitral award dated 19th June, 2023 passed by the Arbitrator nominated by the RCS.

1.1. The Petitioner is a member of the Guru Co-operative Group Housing Society, Dwarka, New Delhi ('Society') i.e., Respondent No. 12.

1.2. The Petitioner contends that the Society wrongfully filed a claim petition against the Petitioner, before the RCS, for recovery of alleged dues and interest. It is stated that the said claim petition was not maintainable and the RCS vide its order dated 21st June, 2022 wrongly referred the claim petition to a nominated Arbitrator; without deciding the objections jurisdiction and limitation.

1.3. It is stated that the Petitioner preferred an appeal before the DCT against the said order of the RCS being Appeal No. 128/2022. However, the DCT vide order dated 30th September, 2022 declined to grant stay of arbitral proceedings and further permitted the nominated Arbitrator to adjudicate the claim petition. It is stated that the Petitioner again approached the DCT praying for the relief of stay of arbitral proceedings, which was yet again declined vide order dated 14th March, 2023.

1.4. It is stated that thereafter the Petitioner participated in the arbitral proceedings and the nominated Arbitrator has passed an award dated 19th June, 2023 allowing the Society's claim petition for recovery of amount of Rs. 2,09,024/- with the direction to the Petitioner to pay the said amount



2024 : DHC : 966-DB



within 45 days. It is stated that the Petitioner has not filed any appeal against the award dated 19th June, 2023 and has now been served with a summon dated 01st December, 2023 issued by the RCS for issuance of a recovery certificate under Section 105 of the Delhi Co-operative Societies Act, 2003 ('DCS Act').

2. Learned counsel for the Petitioner states that his objection with respect to maintainability of reference to arbitration in Appeal No. 128/2022 has not been decided by the DCT and therefore, the award dated 19th June, 2023 is bad in law. He states there exists no cause of action in favour of the Society to maintain the claim petition before the Arbitrator. He states that the demands raised by the Society on the Petitioner, have been wrongly upheld by the Arbitrator. He states that the Petitioner has already paid an amount in excess of the claim awarded and therefore, no further amount is due and payable. He states that he has a good case on merits against the demands raised by the Society.

3. In reply, learned Additional Standing Counsel for Respondent Nos. 1 and 2 states that the Petitioner herein has a statutory remedy of appeal under Section 112 of the DCS Act, 2003 against the award dated 19th June, 2023. He states that the present writ petition is therefore, not maintainable.

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

5. The Petitioner has available the statutory remedy of filing an appeal against the award dated 19th June, 2023. The objections of the Petitioner to the jurisdiction of the Arbitrator are also pending before DCT in Appeal No.



2024 : DHC : 966-DB



128/2022. The objections to the merits of the award which is based on appreciation of evidence cannot be entertained in the writ proceedings. The present writ petition seeking to assail the award dated 19th June, 2023 at prayer (3) in writ proceedings is therefore, not maintainable.

6. The RCS has vide order dated 21st June, 2022 referred the parties to arbitration. The Petitioner assailed the said order dated 21st June, 2022 in Appeal No. 128/2022. The Tribunal by two separate interlocutory orders dated 30th September, 2022 and 14th March, 2023 passed in Appeal No. 128/2022 has rejected the prayer of the Petitioner seeking stay of the arbitral proceedings during the pendency of appeal. After the passing of the said interlocutory orders, the Petitioner duly participated in the arbitration proceedings and opposed the claim petition. The Arbitrator after considering the pleadings and the evidence has passed the award dated 19th June, 2023. In these circumstances, the effect of the interlocutory orders dated 30th September, 2022 and 14th March, 2023 not granting stay of the arbitral proceedings has ceased to have effect and therefore, prayer no. (2) seeking setting aside of the said orders of DCT is not maintainable.

7. The Appeal No. 128/2022 has been filed by the Petitioner and therefore, this Court is unable to appreciate the relief sought as prayer no. (2) for setting aside the said appeal proceedings. The said prayer appears to be misconceived.

8. Similarly, the Petitioner has assailed the order dated 21st June, 2022 passed by the RCS in Appeal No. 128/2022, which is pending adjudication, and therefore, challenge to the order dated 21st June, 2022 in the present



2024 : DHC : 966-DB



petition at prayer (1) during the pendency of the said appeal is not maintainable.

9. The Petitioner has suffered an award dated 19th June, 2023 and elected not to file an appeal against the said award as per Section 112 of the DCS Act, 2003. The Arbitrator has issued a direction to the Petitioner under the arbitral award to pay an amount of Rs. 2,09,024/- within 45 days. The Petitioner has admittedly not paid the said amount and therefore, the summons issued by the RCS under Section 105 of the DCS Act, 2003 is in accordance with law and therefore, prayer (1) in the writ proceedings is not maintainable.

10. We are of the considered opinion that the Petitioner cannot maintain the present writ petition to challenge the RCS's order dated 21st June, 2022, award dated 19th June, 2023 and the order of the RCS dated 01st December, 2023 for the reasons recorded hereinabove.

11. The Petitioner is at liberty to pursue his Appeal No. 128/2022 and his statutory remedies against the award dated 19th June, 2023 in accordance with law.

12. The present petition is accordingly dismissed along with applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 6, 2024/msh/sk

Click here to check corrigendum, if any