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

+ **W.P.(C) 2486/2019**

DR. ARCHANA OJHA AND ANR.

..... Petitioners

Through: Mr. F. K. Jha and Mr. Gaurav Jha,
Advocates

versus

DR. SHAILENDRA OJHA AND ANR.

..... Respondents

Through: Ms. Savita Rustogi, Advocate for R-1

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Date of Decision: 27th March, 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 has been filed seeking setting aside of the order dated 25th February, 2019, passed in appeal bearing no. 120/2015/DCT, whereby the Delhi Co-operative Tribunal ('Tribunal') set aside the order dated 23rd July, 2015, passed by the Deputy Registrar (Arbitration) and allowed the claim of Respondent No.1 herein filed under Section 70 of the Delhi Co-operative Societies Act, 2003 ('DCS Act') for seeking reference to arbitration.



2. Brief facts necessary for deciding this petition reads as under:

2.1. The Petitioners and the Respondent No.1 are the children of late Sh. Raj Vallabh Ojha, who was allotted the Flat No. D-16, Type – II, Phase – I, Press Enclave, New Delhi ('subject property'), by the Respondent No.2 herein i.e., Press Association Co-operative Group Housing Society Ltd. ('Society').

2.2. It is stated by the Respondent No.1 (in his counter affidavit) that late Sh. Raj Vallabh Ojha had filed a notarized nomination form with respect to the subject property bequeathing the said property, after his demise, to his wife i.e., late Smt. Shiv Mohini Ojha and his two sons i.e., the Petitioner No.2 and Respondent No.1 (collectively referred to as 'nominees'). It is stated that the said nomination form further mentioned that after the death of late Smt. Shiv Mohini Ojha, the subject property would be jointly owned by his two sons i.e., the Petitioner No.1 and Respondent No.1 herein. It is stated that Smt. Shiv Mohini Ojha passed away on 14th December, 2009 and subsequently, an application was filed by the Respondent No.1 herein on 12th July, 2012, with the Respondent No. 2 Society, for mutation of membership in his name for half share of subject property.

2.3. It is stated that in pursuance to the application for mutation, the Respondent No. 2 Society, *vide* letter dated 19th August, 2012, recommended to the Respondent No.1 to approach the Registrar of Co-operative Societies ('RCS') for recording joint membership in the name of both the nominees, with equal division of share certificates between them. The Respondent No.2 Society, further sought fresh affidavits from both the nominees. It is stated that the fresh affidavit was only submitted by the Respondent No.1 and thus, the Respondent No.2 did not process the request for mutation.



2.4. The Respondent No.1 being aggrieved by the aforesaid non-processing of application for mutation, filed a petition bearing ARB. CASE No.11/GH/DR/ARB/2015-2016/734, under Section 70 of the DCS Act, before the Deputy Registrar (Arbitration), seeking facilitation of the transfer of membership/ shares of the subject property in the name of the nominees. The Petitioner No.2 herein disputed the relief sought in the said petition, *inter alia*, on the grounds that all the legal heirs of late Sh. Raj Vallabh Ojha were not impleaded and there is a dispute with respect to the said nomination by late Sh. Raj Vallabh Ojha. The said petition was dismissed by the Deputy Registrar vide order dated 23rd July, 2015, holding that the dispute does not come within the purview of Section 70(1) of the DCS Act.

2.5. The Respondent No.1 preferred an appeal bearing No. 120/2015/DCT before the Tribunal, against the aforesaid order dated 23rd July, 2015, wherein the Tribunal after considering the issue, set aside the said order, admitted the claim of Respondent No.1 and directed the parties to appear before the RCS with directions to RCS that upon deposit of requisite fee, the claim be referred to Arbitrator for passing of orders in accordance with law.

3. The present writ petition has been filed assailing the said order of the Tribunal. This Court vide order dated 12th March, 2019, had directed that proceedings under Section 70 of the DCS Act shall be subject to orders in the present petition.

4. Learned counsel for the Petitioner states that no reference to arbitration could have been maintained by Respondent No. 1, as his claim of inheritance based on nomination is barred by time. He states that the application for transfer of the share should have been filed by the Respondent No. 1 within 180 days from the death of late Raj Vallabh Ojha



as per Section 28(1)(iii) of the DCS Act. In this regard, he relies upon the judgment of this Court in *V.P. Yadav v. The Registrar Cooperative Societies and Anr.*¹

4.1. He states that since the Petitioners are disputing the claims of Respondent No. 1 the dispute of succession does not come within the purview of Section 70(1) of the DCS Act.

5. Having heard the learned counsel for the Petitioners and perused the record, we are of the considered view that the impugned order dated 25th February, 2019, passed by the Tribunal does not suffer from any infirmity.

6. The claim petition filed by Respondent No. 1 under Section 70 of the DCS Act against the Respondent No. 2, Society for seeking facilitation of the transfer of membership or shares in the subject property on the basis of nomination is arbitrable under Section 70(1)(b) of the DCS Act; and the opposition of the Petitioners to the validity of the nomination is also arbitrable under the DCS Act as held by the coordinate Bench in the order dated 12th November, 2018, passed in W.P.(C) 6200 of 2018 and under Section 70(1)(a) of the DCS Act. The relevant provision reads as under:

“70. Disputes which may be referred for arbitration.—(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the co-operative society or its committee against a paid employee of the co-operative society arises—

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the co-operative society, its committee or any officer, agent or employee of the co-operative society or liquidator, past or present; or

¹ (2016) SCC OnLine Del 91 (Paras 17 to 20)



(c) between the co-operative society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the co-operative society; or

(d) between the co-operative society and any other co-operative society, between a co-operative society and liquidator of another co-operative society or between the liquidator of one co-operative society and the liquidator of another co-operative society;

such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such disputes.

... ”

(Emphasis Supplied)

7. The Petitioners’ right to seek proof of the validity of the nomination is not affected by the reference to the arbitration. Therefore, in view of the aforesaid provision of the DCS Act, there is no infirmity in the impugned order of the Tribunal directing the RCS to refer the claim of Respondent No. 1 to arbitration.

8. Similarly, with respect to the plea of limitation, the Petitioners are entitled to raise the said plea in the arbitration proceedings and the same will be considered by the Arbitrator in accordance with law. This is also the mandate of the judgment of this Court in **V.P. Yadav** (supra).

9. Accordingly, the present petition is without any merit and is accordingly dismissed along with pending applications. Interim order dated 12th March, 2019 is hereby vacated.

10. We have been informed that the arbitral proceedings remain stayed during the pendency of the writ petition at the behest of Petitioners herein by relying upon the interim order dated 12th March, 2019. We may note that this was not the intent of the interim order passed by the Court. However, since



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the petition has been dismissed and the interim order vacated, we hereby direct the Arbitrator to complete the proceedings expeditiously and not grant adjournment to either party.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 27, 2024/hp/aa