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

+ **W.P.(C) 10482/2021 & CM APPL. 32288/2021**

**NEW RASHTRIYA COOPERATIVE GROUP HOUSING
SOCIETY LTD**

..... Petitioner

Through: **Mr. Ankur Arora and Ms. Srishti
Sharma, Advocates**

versus

SUMAN SHARMA

..... Respondent

Through: **None**

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Date of Decision: 25th April, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking quashing and setting aside of the arbitral award/Orders which are as follows: -

- a. Arbitral Award dated 23rd April, 2016 passed by Sh. R.K. Mehra, learned Arbitrator in Arbitration Case No. 4269/GH/DR/ARB/2008-09.
- b. Order dated 15th January, 2018 passed by Delhi Co-operative Tribunal ('DCT') in Appeal No. 179/2016/DCT.
- c. Order dated 20th August, 2019 passed by DCT in Review Application No. 01/2018 in Appeal No. 179/2016/DCT.



2. Petitioner herein is New Rashtriya Co-operative Group Housing Society Limited ('Society') and the Respondent herein is an erstwhile member of the Petitioner Society (M.No. 165).
3. It is the stand of the Society that the Respondent resigned from her membership in April, 2003 and accepted the refund of the entire amount of Rs. 3,50,000/- deposited with the Society in June, 2003 and thus, ceased to be a member of the Society. The Society thereafter, completed the construction of flats in August, 2005.
4. Though the refund of the amount is admitted by the Respondent, yet, Respondent disputed her resignation and approached the Registrar Cooperative Society ('RCS') in the year, 2008 with a claim that she continues to be a valid member of the Society and sought a direction for allotment of a flat to the Respondent. The matter was initially not referred to arbitration and finally on 29th June, 2015, the RCS passed an order under Section 70 of the Delhi Co-operative Societies Act, 2003 ('the Act') and referred the case for arbitration.
5. The Arbitrator passed the impugned award dated 23rd April, 2016 and held that though the refund of the entire amount is a matter of record, yet he was persuaded to hold that the Respondent had not resigned from the membership. The Arbitrator, thus, gave a benefit of doubt to the Respondent and allowed her claim of declaration of membership and directed the Society to allot her a flat as early as possible.
6. The Society contends that the Arbitrator was *functus officio* as on 23rd April, 2016 as the application for extension of time to pass the award filed by the Arbitrator before the RCS was not allowed vide order dated 15th April, 2016; and therefore, the award passed is null and void. The Society



further contends that copy of the impugned award was not served upon the Society at its registered address and therefore, the Society had no notice of the passing of the award.

7. The Society contends that in the absence of the service of the award, the Society was compelled to inspect the record in the office of the RCS and it was thereafter, certified copy of the award was made available to the Society. The appeal was, therefore, filed belatedly on 17th October, 2016 before the DCT, impugning the award dated 23rd April, 2016 and seeking condonation of delay of 117 days. However, the DCT *vide* order dated 15th January, 2018 declined to condone the delay and dismissed the appeal on the grounds of limitation. The DCT *vide* subsequent order dated 20th August, 2019 clarified that it has not touched on the merits of the appeal.

8. In the present petition, notice was issued to the Respondent and she is duly represented through a counsel. Learned counsel for the Petitioner has drawn our attention to an affidavit dated 22nd June, 2023 filed by the Respondent stating that she does not wish to pursue her claim for the flat in the Petitioner-Society. The relevant extract from the affidavit dated 22nd June 2023 reads as under: -

“2. That I was the Respondent in the Appeal No. 179/2016/DCT which was pending and declined by the Hon’ble Delhi Co-Operative Tribunal against the Petitioner and aggrieved from the Order dated 15.01.2018 passed by the Hon’ble Delhi Co-Operative Tribunal the Petitioner preferred this Writ Petition.

3. That I hereby undertakes that I did not want to pursue the present Writ Petition due to deteriorated health and financial conditions, I further submits that I will not further Claim the Flat in the Petitioner Society in future in any manner and through any of the Court or legal proceedings.”

(Emphasis Supplied)

However, none appears on behalf of the Respondent. In these facts, learned



counsel for the Petitioner has addressed us on the merits and filed written synopsis in support of his submissions.

9. Having heard, the learned counsel for the Petitioner and after perusing the record, we are of the considered opinion that the present petition deserves to be allowed.

10. It is a matter of record that after the Respondent was admitted as a member, she had deposited a total sum of Rs. 3,50,000/- in three installments on 6th July, 1998, 25th May, 2000 and 30th April, 2001 through cheques. However, admittedly, the entire amount stood refunded to her by a cheque in June, 2003.

11. The Petitioner has relied upon the minutes of meeting of the Society dated 10th April, 2003, recording acceptance of the resignation of the Respondent and has relied upon the fact of refund to corroborate the said resignation. A perusal of the impugned award shows that the effect of the admitted refund of the entire amount of Rs. 3,50,000/- and the minutes of meeting dated 10th April, 2003 has neither been considered nor deliberated upon by the Arbitrator.

12. The Respondent collected refund of the entire deposit in June, 2003 and admittedly, maintained silence until June, 2008 before raising her first claim for allotment. However, in the interregnum, the construction of the flats stood completed in 2005 and the list of members of the Society was also finalized in 2005. The inaction of the Respondent for these five crucial years has neither been explained by her nor deliberated upon by the Arbitrator in the impugned award.

13. The Society contended that as on 07th February, 2003 as per the demands made on the members, including the Respondent, a sum of Rs.



9,50,000/- was payable; however, the Respondent had paid only a sum of Rs. 3,50,000/- and was in arrears of Rs. 6,00,000/-. The Society contended that the Respondent was liable for expulsion due to this default and elected to resign from membership and collected her refund. It is stated that since the construction was in full swing, the Society was raising demands on the members for the construction costs.

14. The consideration of the aforesaid facts by the Arbitrator was essential as they constituted the defence of the Respondent herein. However, the operative part of the award does not contain any deliberation on the aforesaid contentions of the Society. In the absence of consideration of the aforesaid material facts by the Arbitrator, we are of the considered opinion that the impugned award is liable to be set aside as it is unreasoned and thus contrary to the principles of natural justice.

15. In addition, the Society has contended that the Arbitrator entered reference on 21st August, 2015 and was obliged to decide the case within three months as per Rule 85 of the Delhi Co-operative Societies Rule, 2007. It is stated that the Arbitrator applied for extensions and his tenure was validly extended till 31st March, 2016; however, his request for a further extension vide letter dated 15th April, 2016 was denied by the Registrar and therefore, his tenure expired on 31st March, 2016. The Society has contended that therefore, the Arbitrator was *functus officio* and could not have passed the impugned award on 23rd April, 2016. The impugned award was therefore, passed without any jurisdiction. The said facts have not been disputed by the Respondent and for this reason as well, we are of the considered opinion that the impugned award is liable to be set aside.

16. The Society has contended that the copy of the award was not served



on their registered address at Dwarka and therefore, they were unable to prefer an appeal before DCT within the statutory period of appeal. The Society has placed on record correspondence address to the RCS notifying the details of its registered address in Dwarka and the record of the RCS showing the registered address of the Society at Dwarka. Further, the assertion of the Society that it was not served at its registered address in Dwarka is not disputed by the Respondent. Thus, the Society had made out a sufficient cause for condonation of delay before the DCT and its appeal has been wrongly dismissed on the grounds of limitation by DCT vide order dated 15th January, 2018 and 20th August, 2019.

17. In view of the aforesaid findings, the impugned award cannot be sustained and we accordingly, allow the present writ petition and set aside the impugned award dated 23rd April, 2016 as well as the impugned orders dated 15th January, 2018 and 20th August, 2019 passed by the DCT. Pending applications, if any, stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 25, 2024/hp/MG