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

+ **C.R.P. 73/2018 & CM APPL. 14318/2018, CM APPL. 40190/2022, CM APPL. 40191/2022**

THE BHAJANPURA CO OPERATIVE THRIFT &
CREDIT SOCIETY LTDPetitioner

Through: Mr. Vipin Dilawari &
Mr. Hemant Pathak, Advs.

versus

SANJAY KUMAR & ORSRespondents

Through: Mr. Dheeraj Kumar, Adv.
for R1 & R2

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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06.03.2025

1. The present petition is filed challenging the order dated 14.03.2018 (hereafter '**the impugned order**') passed by the learned Additional District Judge ('**ADJ**'), Tis Hazari Courts, Delhi in ARBTN. No. 398/2017.

2. By the impugned order, petitioner's application under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('**CPC**'), raising the ground of maintainability of the petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('**A&C Act**'), was dismissed.

3. The learned counsel for the petitioner submits that the respondent, by a petition under Section 34 of the A&C Act, had challenged the award passed by the nominated Arbitrator in terms of Section 71 of the Delhi Co-operative Societies Act, 2003 ('**DCS Act**').

4. He submits that the disputes were referred to arbitration



under Section 70 of the DCS Act and, therefore, any order passed can only be a subject matter of appeal under Section 112 of the DCS Act.

5. The learned ADJ dismissed the application under Order VII Rule 11 of the CPC noting that the dispute between the parties is not covered under the category of disputes in Section 70 of the DCS Act and, therefore, as a legal consequence, any order passed cannot be a subject matter of appeal under Section 112 of the DCS Act.

6. The learned counsel for the respondent, at the outset, submits that the purpose of the petition under Section 34 of the A&C Act was adjudication in regard to the impugned award by the nominated arbitrator, the liability of which had been saddled on the respondent without even granting any opportunity of hearing. He submits that the award was passed on the very same day when the respondent appeared before the Tribunal without affording any opportunity of filing reply.

7. He submits that, even otherwise, the respondent only stood as a surety to another member and, therefore, could not have been subjected to arbitration. He, however, submits that he has no objection if the dispute is heard by the Tribunal under Section 112 of the DCS Act.

8. Considering that the respondent has no objection if the Tribunal is allowed to hear the appeal under Section 112 of the DCS Act, this Court does not consider it apposite to adjudicate on the issues raised in the present petition.

9. In view of the above, the impugned order dated 14.03.2018 is set aside and the proceedings under Section 34 of the A&C Act are terminated. The liberty is granted to the respondent to file an appeal before the concerned Tribunal in terms of Section 112 of



the DCS Act.

10. Since the respondent had preferred the petition under Section 34 of the A&C Act within the limitation as prescribed in the A&C Act, so, the appeal, if preferred by the respondent within a period of four weeks, is directed to be adjudicated without insisting on any application to be made for condonation of delay. The Tribunal is also requested to expedite the hearing of the matter and preferably dispose of the appeal within a period of six months.

11. The present petition is disposed of in the aforesaid terms.

12. The learned counsel for the petitioner, on instructions, submits that no execution will be pursued in regard to the impugned award, till such time, the appeal is decided by the Tribunal.

AMIT MAHAJAN, J

MARCH 6, 2025

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