(2017) 01 DEL CK 0364

In the Delhi High Court

Case No : 599 of 2017

DELHI NIWAS CO-OP. G/H SOCIETY LTD. APPELLANT

Vs

SH. SURENDER KUMAR, & ORS. RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

Citation : (2017) 01 DEL CK 0364

Hon'ble Judges : Sanjiv Khanna, Chander Shekhar

Bench : DIVISION BENCH

Advocate : Rohit Kumar Modi, Vikas Shokeen

Final Decision : Dismissed

Judgement

C.M. No.2771/2017

1. Exemption allowed, subject to all just exceptions. W.P.(C) 599/2017

Delhi Niwas Cooperative Group Housing Society Ltd., in this writ petition filed in January, 2017, impugns order dated 13th July, 2015 passed by the Delhi Cooperative Tribunal rejecting their appeal against Award dated 30th January, 2012. The writ petition, it is apparent, has been filed after about 18 months from the date of passing of the impugned order by the Delhi Cooperative Tribunal. No reason or ground for the aforesaid delay has been given in the writ petition.

2. We also find that the grounds raised in the writ petition are factual. They do not refer to any procedural irregularity or lapse on

the part of the Arbitrator, who had passed the Award dated 30th January, 2012.

3. The petitioner Society had invoked arbitration proceedings seeking recovery of Rs. 9,84,597/- from Surender Kumar on account of arrears of instalments of Rs.1,59,047/-, penal interest of Rs.8,23,553/-, property insurance premium of Rs.1,417/- and plot tax of Rs.580/-. It is apparent that the said Surender Kumar had transferred his right, title and interest in Plot No.89C to one Sanjay Rehlan,

who had appeared as Power of Attorney holder and had contested the said proceedings. In fact, it is not even known whether the said Surender Kumar was/ is alive.

4. Sanjay Rehlan in his defence statement had pointed out that Surender Kumar had paid the entire dues of Rs.78,529/- on 31st March, 1993 by way of cheque No.371477 of Rs.12,992/- and cash of Rs.65,537/-, for which receipt No.10517/- was issued. On payment of the said amount, entries were duly made in the accounts/passbook of DCHFC loan account recording that the account was closed.

5. The primary dispute was whether or not the aforesaid two payments by way of cheque and cash were made. The Arbitrator in the impugned Award dated 30th January, 2012 has elaborately examined the said issue and has accepted the case put forward by Sanjay Rehlan as Attorney of Surender Kumar. We would for the sake of convenience like to reproduce some of the paragraphs of the said Award, which read:-

"As regards the receipt of cash that can be verified from original cash counter-foil of the receipt book bearing

receipt No.10517, Society has claimed that such receipt No.10517 has been not used by the society. The society has stated that this receipt No.10517 (from Receipt book No.10501 to 10600) does not exist. But as per High Court Order as I have mentioned above at page No. the receipt book No.10501 to 10600 yet to be received from the earst (sic)-while management.

The society was directed in day to day proceedings of this case to produce (1) the cash book pertaining to the period from 92-93 and personal loan ledger of defendant and share money ledger to verify as to whether cash received by the society through receipt No.10517 dated 31-3-93 has been recorded in cash book or not. Personal Loan ledger will give the details of instalment paid during the course of business of the society. Share ledger was demanded to verify as to whether the society has shown the share money adjusted in the refund of his loan of DCHFC as per receipt No.10517 dated 31-3-93.

The claimant society was given three to four adjournments for filing these records before my court for verification. But the society has failed to produce those ledgers before my court for reasons best known to them. As regards Loan Ledger the claimant society stated that Loan Ledger has not been maintained by the then management from 1989 onwards. If this is the case, then how the society has filed a statement of loan a/c showing that Rs.9,84,597.00 is due from the defendant Shri Surindra Kumar/Shri Sanjay Rehlan, Power of Attorny (sic) Holder of Shri Surinder Kumar.

As regards cash book pertaining to the period 1992-93 was a very vital document required to be verified as to whether the money received by the Accountant of the Society vide receipt No.10517 dated 31-3-93 has been entered into cash book or not. The claimant society has avoided producing this cash book before my court for

verification and on the last date of hearing, they came up with the plea that the cash book is not traceable. This same cash book has been produced before the Arbitrator in connection with the Arbitration Case No.3286/AR/ARB/02-03 in similar case between the claimant society v/s Shri Satish Jindal (Member) and his Power of Attorney Holder Shri Anil Wadhwa. In that case society was claiming the receipt No.10367 dated 15- 1-93 for Rs.89,049/- was not acceptable being forged. But on verification of the cash book it was found the money received vide receipt No.10367 dated 15-1-93 has been duly entered in the cash book and day to day cash balance brought forward in course of day to day business and cash balance in the cash book for the year 1992-93 was duly brought forward to the cahs book of 1993-94. The same cash book for the year 1992-93 was demanded for verification. But the claimant society has avoided to produce that cash book before my court. As such the court could not verify the cash amount received by the society from defendant of this case, vide receipt No.10517 dated 31-3-93, has been entered in the cash book or not. This cash book for the period 1992-93 is very much with the Society as it has already been produced by the society to the Arbitrator in connection with Arbitration case No.5286/AR/ARB/02-03. On verification of this cash book it is found that cash amount indicated in the receipt No.10517 dated 31-3-93 is entered in the cash book and DCHFC Loan has not been refunded by the Society in A/C of the defendant Loan A/C with DCHFC, then the responsibility and liability of that loan a/c remain with the then management but not with the member concerned. If it is found that the amount in question has not been entered in the cash book the society has to verify the counterfoil of the receipt book from which this receipt No.10517 dated 31-03-93 has been issued. As I have already stated that the receipt book No.10501 to 10600 is lying with the then management yet to hand over to the present M.C."

6. With regard to the cheque payment, counsel for the petitioner Society accepts that they had not produced their bank passbooks to show either the aforesaid cheque was not encashed or when represented for encashment, was not honoured. Counsel for the petitioner Society submits that Sanjay Rehlan had only produced photocopy of the Receipt No.10517 and even the passbook was not produced in original. This aspect was examined by the Arbitrator, who has accepted the explanation given by Sanjay Rehlan and the relevant findings of the Arbitrator read as under:-

"As regards original copy of receipt No.10517 and passbook could not be produced before my court by the defendant. In his argument the defendant has stated that at the time of purchasing the flat from the original member Surindra Kumar gave him the photocopy of the receipt stating that originals are being kept with him and if/when needed he will produce the same. After his expiry his family members could not trace out where he has kept these records of the society. However, the defendant has stated in his argument that when the cheque was received the same was encahsed by the society through Bank of

Baroda from S.B. A/C No.11729 in Canara Bank, 18-Central Market, Ashok Vihar, Delhi. The cash amount has been obviously received by the Society. So far as the cheque is concerned it has been confirmed that the money has been deposited to the society a/c through clearance of Bank of Baroda."

7. It may be noted that the Accountant of the petitioner society, who had purportedly signed the passbooks and receipts, had expired. Therefore, the Arbitrator has recorded that no firm opinion could be given as the said evidence was not available and could not be verified.

8. Looking at the totality of the aforesaid facts, we do not think that we should exercise our writ jurisdiction and interfere with the impugned order dated 13th July, 2015, upholding the Award dated 30th January, 2012. The writ petition is accordingly dismissed.

