(2002) 10 DEL CK 0121

In the Delhi High Court

Case No : C.W. No. 5142 of 2000

Jagdish Kalra APPELLANT

Vs

Delhi Cooperative Tribunal and Others RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Citation : (2002) 10 DEL CK 0121

Hon'ble Judges : Jiwan Dass Kapoor, J;B.A. Khan, J

Bench : Division Bench

Advocate : R.K. Gupta, for the Appellant; Rakesh Munjal and Kritika and Sujata Kashyap, for R-2, for the Respondent

Judgement

J.D. Kapoor, J.—Feeling aggrieved of Award dated 18.2.2000 accepting the claim of the Respondent-Society and directing the Petitioner to pay Rs. 2,20,084/- along with interest payable from 1st of December 1997 till the date of actual payment and the impugned order dated 20.7.2000 whereby the appeal of the Petitioner against the Award was dismissed, Petitioner has filed this Petition.

2. Petitioner'' is a member of Respondent 2-Society. R-2 filed a claim petition for recovery of Rs. 2,20,606.48 along with an interest @ 3%. As per affidavit of the Society Rs. 1,10,140/- were towards loan interest account; Rs. 80,000/- towards repayment of loan amount and Rs. 5,522/- towards maintenance charges. The statement filed by the Society showed that the Petitioner had paid a sum of Rs. 2,97,724/- towards cost of the flat. The main grievance of the Petitioner before the Arbitrator was that the cost of the flat calculated by the Society was incorrect and that he has already remitted a sum of Rs. 2,97,724/- to the Society which included the loan amount of Rs. 80,000/- taken from DCHFC on his behalf. Cost rebate of Rs. 9,000/- was also not given to him by the Society. Further, the Society was also liable to pay him rent amounting to Rs. 33,000/- for using his flat from June 1990 to March 1993. On this premise he has paid Rs. 1,64,724/- in excess to the Society.

3. As was apparent from the claim and counterclaim of the parties the sole dispute before the Arbitrator was whether the loan amount of Rs. 80,000/- raised by the Society from DCHFC on behalf of the Petitioner has been cleared by him or not. Admittedly the dispute towards cost of the. flat was not raised by the Petitioner at any stage either before the Society or before the Registrar and, Therefore, this plea is not available to the Petitioner and his claim of having made excess payment on account of the cost of the flat as raised by him was rightly declined by the Arbitrator and the Tribunal.

4. It is not in dispute that the Society borrowed Rs. 80,000/- on behalf of the Petitioner at the rate of 13% per annum repayable in 80 quarterly Installments. The interest alone was recoverable in the first four quarterly Installments and loan plus interest in the subsequent 76 equated Installments. It was also one of the terms of the loan that in case of default, an additional penal interest at the rate of 2.5% per annum was chargeable and if default was persistent the interest can reach up to 26%.

5. The statement filed by the Society projected the levy of penal interest at the rate of 24%. It is contended that the penal interest at the rate of 24% is in violation of Rule 78 (4) (5) which provides as under:

"78. Loans and Subsidies by Government

1. Loans and subsidies to a co-operative society or class of co-operative societies may be granted by Government by a general or special order from time to time.

2. An application by a co-operative society for a loan or subsidy or both from a Government Department or a Government sponsored agency shall be made through the Registrar. While forwarding the application, the Registrar shall record his opinion regarding the eligibility of the co-operative society for the said loan or subsidy or both, its financial position and the desirability of sanctioning to the society the said loan or subsidy or both.

3. A co-operative society receiving Government loan or subsidy or a society in which a share or shares have been subscribed or liability by way of guarantee has been undertaken by the Government, shall furnish such information and submit such returns as the sanctioning authority or the Registrar may from time to time, require.

4. In case of default in repayment of loans, the Financing Bank shall charge a penal rate of interest not exceeding 1 percent per annum over and above the normal rate of interest from the defaulting societies.

5. In case of default in repayment of loans by the members of any class of societies, the penal rate of interest shall be charged not exceeding 3 per cent per annum, by the co-operative society over and above the normal rate of interest from the date of default.

Explanation: Sub-rules (4) and (5) of this Rule shall be applicable to a Financing

Bank only in case of default in repayment of loans and subsidies granted by Government routed through such Bank to a Co-operative Society or class of co-operative societies or in case of default in repayment of such loans and subsidies by the members of any class of societies.

6. In this regard, learned counsel for the Petitioner relied upon the judgment of Division Bench of this Court in Agrasen Co-operative Grasen Co-operative Group Housing Society Ltd. Vs. Delhi Co-operative Societies Tribunal, wherein it was held that

"Rule 76(5) does not cover the payment of Installments towards the cost of construction and that it is unreasonable to charge daily penalty of Rs. 10/- per day on the one hand and then also to charge interest at the rate of 24% and this is likely to defeat the very basic spirit and soul of cooperation and Co-operatives and we certainly do not approve the same."

7. The fact that the payment of Rs. 51,594/- was made towards the loan account cannot be lost sight off. The statement filed by the Society shows that it has claimed Rs. 500/- per Installment as penalty as on 30.6.1996 and thereafter different rates of interest has been levied on the basis of the compound interest.

8. Having regard to the aforesaid discrepancy in charging the penal interest as well as the payment made by the Petitioner, the view taken by the Division Bench of this Court that it is unreasonable for the Society to charge penal interest on the one hand and penalty on day-to-day basis on the other hand comes to the rescue of the Petitioner. On the one hand the Society has charged Rs. 500/- per Installment which was in violation of Rule 78(4) and (5) as referred above and on the other hand has charged interest at the exorbitant rates and the Installments for the quarter 30.9.1996 to 31.12.1996 have been shown in the penal interest.

9. It is further projected in the claim filed by the Society that it has charged penal interest besides interest on the alleged delayed payment and interest on over due loan amount. Similarly, the interest on the over due loan Installment was not permissible as per the above referred rule and term of the loan. The Award is modified to the extent that the Society will be entitled to recover the awarded amount less amount levied as interest. on over due loan Installment and difference between Rs. 80000/- loan payment and Rs. 51,594/- paid by the Petitioner towards loan amount. Petition is disposed of in aforesaid terms.