(2019) 08 DEL CK 0081

In the Delhi High Court

Case No : Civil Writ Petition No. 8327 Of 2019, Civil Miscellaneous No. 34481 Of 2019

Rajesh Kumar Garg APPELLANT

Vs

Delhi State Co-Operative Bank Ltd. And Anr RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:
Delhi-Cooperative Societies Act, 2003 — Section 70, 70(4), 70(4)(a)(i), 71, 112

Citation : (2019) 08 DEL CK 0081

Hon'ble Judges : Vipin Sanghi, J;Rajnish Bhatnagar, J

Bench : Division Bench

Advocate : Vipin Dilawari

Judgement

Vipin Sanghi, J

1. The petitioner assails the order dated 4.7.2019 passed by the Delhi Co-operative Tribunal in Appeal No. 90/2017 arising from Arbitration Case No. 1623/AR/ARB/16-17 whereby the petitioner's said appeal under Section 112 of the of the Delhi-Cooperative Societies Act, 2003 against the arbitral award dated 9.5.2017 under Section 71 of the said Act passed by the learned Arbitrator has been rejected.

2. The petitioner was arrayed as respondent no.2 in the said arbitration proceedings. The case of the petitioner is that he was a partner of M/s P.P.Agro Overseas in whose name the loan had been taken from the respondent-Delhi State Cooperative Bank Limited. The petitioner did not appear and participate in the arbitral proceedings. The award passed by the learned Arbitrator was as follows:-

"The Defendants shall pay jointly and severally to The Delhi State Co-Operative Bank Ltd. The amount as follows:-

(i) Principal Amount

Rs. 2,05,623.00

(ii) Interest up to 31/03/2017

Rs.5,71,843.00

(iii) Arbitration Cost @ 7.50%

Rs. 58,310.00

Total

Rs.8,35,776.00

Further interest @ 14%+1% p.a.= 15% on the outstanding loan amount (Principal + intt. amount) w.e.f. 01/04/2017 the compounded on monthly basis till realization of the entire loan in full with up to date interest and cost shall be paid by the Defendants."

3. The submission of learned counsel for the petitioner is that the claim filed by the respondent was barred by limitation. He submits that though the loan was obtained in the year 2004, the arbitration had been invoked by the respondent only in May 2016.

4. He further submits that other partner of M/s P.P.Agro Overseas Smt. Savitri Devi died on 6.2.2015. The respondent-bank did not initiate arbitration during her life time. Lastly, learned counsel for the petitioner submits that the claim of the respondent-bank was allowed in its entirety with a high rate of interest, and the petitioner has already paid a sum of Rs. 5,99,000/- to the respondent. Learned counsel submits that the petitioner is suffering from medical ailments, and the respondents should be called upon to grant remission to the petitioner in the matter by computation of rate of interest.

5. So far as the first submission of the learned counsel for the petitioner is concerned, we do not find any merit therein. The petitioner, admittedly, did not participate in the arbitral proceedings, and did not take any plea of limitation before the arbitral Tribunal. Limitation is a mixed question of fact and law. If the said objection would have been raised by the petitioner, the respondent-bank would have had the opportunity of meeting the same. By not participating in the arbitration proceedings and allowing the arbitral Tribunal to proceed to adjudicate the claim, in our view, the said objection of limitation could not have been raised before the Tribunal for the first time. Even otherwise, we do not find any merit in the said objection of the petitioner. The claim made by the respondent related to recovery of sum of money including interest. Section 70 of the Act provides the mechanism for resolution of disputes to arbitration. Clause 4 of Section 70 deals with the aspect of limitation. The same is relevant and reproduced herein below:-

"(4) (a) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), but subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Registrar under sub-section (1) shall -

(i) when the dispute relates to the recovery of any sum including interest thereon due to a co-operative society by a member thereof, be computed from the date on which such member dies or ceases to be member of the co-operative society, be three years;

(ii) save as otherwise provided in sub-clause (iii), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), be six years from the date on which the act or omission with reference to which the dispute arose or took place;

(iii) when the disputes relates to a co-operative society which has been ordered to be wound up under section 95 or section 96 or section 97 or in respect of which an administrator has been appointed under section 37, be six years from the date of the order issued under section 95 or section 96 or section 97 or section 37, as the case may be; and

(iv) when the dispute is in respect of an election of an officer of a co-operative society be thirty days from the date of the declaration of the result of the election.

(b) The period of limitation in the case of any other dispute except those mentioned in the foregoing clause which are required to be referred to the Registrar shall be regulated by the provisions of the Limitation Act, 1963 (36 of 1963), as if the dispute was a suit and the Registrar a civil court.

(c) Notwithstanding anything contained in clauses (a) and (b), the Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired." (emphasis supplied)

6. The aforesaid clause shows that the same overrides the limitation prescribed under the Limitation Act. It goes on to lay down the period of limitation for different kinds of disputes that may arise under the Act. In so far as the disputes relating to recovery of any sum including interest thereon due to Co-operative Societies by member thereof is concerned, the limitation for to be computed "from the date on which such member dies or ceases to be member of the co-operative society". For such claims, the period of limitation is prescribed to be three years. Thus, in a case where a co-operative society seeks to recover any sum of money including interest from a member, the time begins to run only when such member dies or ceases to be a member, and from the said date of death or ceasure of the membership, the period of limitation is three years. The limitation does not begin to run either from the date the amount became due and payable, or from the date of default.

7. In the present case, admittedly, one of the members of the respondent-society

namely Smt. Savitri Devi died only on 6.2.2015. She was a partner of the firm M/s P.P Agro Overseas. Therefore, the period of limitation started to run from the said date only, and the claim was preferred by the respondent within a period of three years from the said date. It is not the petitioner's case that either Smt. Savitri Devi, or the petitioner, ceased to be a member of the respondent-bank at any earlier point of time.

8. Counsel for the petitioner has sought to place reliance on a Division Bench judgment of this Court in the case of Vardhman Co-Operative H/B Society Ltd. Vs. Anil Kumar Jain , W.P.(C) 1359/2012, decided on 27.9.2012. In our view, reliance placed on this decision is completely misplaced, since the same does not relate to recovery of any sum including interest by the Co-Operative Society. In fact, a perusal of this judgment shows that Clause (i) of Section 70(4) (a) was not even considered by the Court. The first submission of the petitioner is, therefore, rejected.

9. Considering the fact that award had been made for the amount of Rs.8,35,776/- on 9.5.2017, which included the principal amount of Rs.2,05,623/-, and the petitioner claims were already paid by 5,99,000/- only with a view to consider the aspect of remission of interest, we issue notice to the respondents, returnable on 23.9.2019.