
(2002) 08 DEL CK 0117

In the Delhi High Court

Case No : Civil Writ Petition No. 982 of 1998

Samachar Coop. G.H. Socy. Ltd.

APPELLANT

Vs

N.K. Sareen and Others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Citation : (2002) 101 DLT 113

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

Bench : Division Bench

Advocate : Ramesh Chandra and Geeta Mehrotra, for the Appellant; Respondent No. 1 in person, for the Respondent

Judgement

Khan, J.—Petitioner society feels aggrieved of the orders passed by Co-operative Tribunal overturning the award passed by Registrar for recovery of Rs. 1.41 lacs and odd against R-1.

2. R-1 became a member of the society and was allotted Category "A" flat No. 195. It appears that the cost of the flat was estimated at Rs. 2.48 lacs or so out of which he is said to have paid only Rs. 1.58 lacs and odd. It is alleged that the society borrowed loan from DCHFC Limited and out of this credited Rs. 1 lac to his account which he was to repay in quarterly Installment of Rs. 3,564/- but which he failed to do within time causing loss to the society and subjecting it to penal interest.

Petitioner society filed a claim petition against R-1 on this raising a demand of Rs. 33,657/- initially up to December 1991 and subsequently increasing it to Rs. 50,475/-. The arbitrator passed award dated 6.3.1993 finding Rs. 50,475.66 due against R-1 and directed the society to recalculate payable area category-wise and adjust this against any over-charging made on this respondent. It also directed the society to adjust the difference between interest of Rs. 4,333.29 and Rs. 3,739.69 as on 31.12.1999 and required R-1 to pay the rest of the dues forthwith. The society took appeal against this award which was dismissed on

12.10.1993. It later claims to have made the recalculation of payable areas of flats and on this worked out the cost of flat at Rs. 2,49,993.85 of which Rs. 2,48,650/- was paid by R-1. Pursuant thereto, it filed a claim petition for recovery of Rs. 1,02,051/- allegedly due against R-1 up to September 1995 and obtained the award dated 31.1.1997 against him. R-1 filed an appeal against this before Tribunal which was allowed and award set aside by order dated 21.9.1997. While doing so, Tribunal held as under:-

"I find that earlier award passed by then Arbitration was in favor of appellant (R-1). The same was upheld by Tribunal dismissing society's appeal. I further find that respondent society had not filed any further writ/appeal against order passed by Tribunal. This order passed by Tribunal became final. Hence, it is not understood how another award has been passed on the same subject in these two cases. Hence, the award is hit by principles of res judicata and hence is not sustainable and is quashed."

4. Petitioner society challenges this on several grounds and more particularly on the ground that principle of res judicata could not be applied to the case and also that Tribunal had gone contrary to record by holding that the first award on society's claim petition had gone in favor of R-1.

5. R-1 has filed a lengthy reply raising a host of issues. His main grievance seems to be that the society was wrongly and excessively charging him for a flat which was without lift and was treating his flat in a wrong category. It is also disputed by him that he had borrowed any loan of Rs. 1 lac through the society from DCHFC. He justifies the order of the Tribunal and blames the society for dragging him into vexatious proceedings. All told, he disowns any liability.

6. Dehors the merit of rival contentions and the extent of liability, if any, of R-1, all we are called upon in the present case is to test the basis of Tribunal order dated 29.9.1997 setting aside the arbitrator's award for recovery of Rs. 1.40 lacs against R-1 which had allegedly wrongly applied the principle of res judicata. Confining to this aspect only, we find that Tribunal had taken the escape route and had adopted a cavalier approach in dealing with the issue. It had neither indicated that the matter in second award was directly and substantially in first award dated 6.3.1993 which was finally heard and decided. Needless to emphasise that the principle of res judicata, if at all applicable in the facts and circumstances of the case, could not have been invoked or applied without a comparative survey of the terms of two awards to show that decision in the first award would bar the second by res judicata. The Tribunal had not only failed in this but had also gone contrary to the record by holding that the first award had gone in favor of R-1 (appellant before it). It had also left the other issues raised by the two sides untouched. It's order, Therefore, is bad on the face of it and was liable to be set aside.

7. This petition accordingly succeeds and the order passed by Tribunal dated 29.9.1997 is set aside. The matter is remanded back to Tribunal where Appeal

Case No. 33/93 shall revive and be considered afresh and disposed of on merits after hearing the parties.

Parties to appear before Tribunal on 9.9.2002.