
(2010) 07 SHI CK 0163
In the High Court Of Himachal Pradesh
Case No : C.W.P No. 3891 of 2009

Savita Gaur

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2010) 07 SHI CK 0163

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surjit Singh, J.—Petitioner is aggrieved by the award, dated 30.11.2005, copy Annexure P-1, order dated 1.9.2007 of Appellate Authority, Annexure P-2 and order dated 23.7.2008 of Revisional Authority, Annexure P-3, by which she has been saddled with the liability of Rs.51,020/-, with future interest @ 18% per annum, till the aforesaid liability is discharged.

2. Respondent No. 5 is a Cooperative House Building Society. One Mohan Singh was a member of this Society and he had been allotted a house. Later on, Petitioner purchased membership of the Society from said Mohan Singh and with the purchase of membership, she became allottee of the house. As per terms and conditions of the allotment, value of the house was to be assessed by one D.B. Kapil. Petitioner claims to have approached said D.B. Kapil, who assessed the value for a sum lesser than the money which had already been paid, on account of cost of construction. So, she applied for refund of the excess payment. Respondent No. 5, i.e. the Society, treated it as a dispute and referred the same to Arbitrator (Block Development Inspector, Cooperative Societies). Said Arbitrator, vide Award, copy Annexure P-1, said that a sum of Rs. 4058/- was due from the Petitioner, on account of difference between the value assessed by D.B. Kapil and the money already paid. He also held that two amounts, one to the tune of Rs. 29,144/- and the other to the tune of Rs. 28,818/-, were due

from the Petitioner, on account of interest, on the aforesaid amount of Rs. 4,058/- and another sum of Rs. 1000/- was due, on account of expenses. Thus, he worked out the liability of the Petitioner at Rs. 63,020/-. Out of this amount, a sum of Rs.12,000/- was deducted on account of some relief and the remaining amount of Rs. 51,020/- was ordered to be recovered, with interest @ 18% per annum. This order was passed on 30.11.2005.

3. Appeal against the aforesaid order was filed before the Deputy Registrar, Cooperative Societies, who dismissed the same vide order dated 1.9.2007, on the ground that the same was barred by time. Application, u/s 5 of the Limitation Act, filed with the appeal, was dismissed with the finding that sufficient cause for condoning the delay had not been shown. Further, revision was carried to Joint Secretary (Co-operation), who dismissed the same, vide order dated 23.7.2008, copy Annexure P-3.

4. Petitioner is aggrieved by the aforesaid orders. Her contention is that dismissal of her appeal by the Deputy Director, on the ground of limitation, is not justified. Also, she has assailed the award of the Arbitrator on the ground that reasons for fixing the liability of the Petitioner have not been indicated.

5. I have heard the learned Counsel for the parties and gone through the record.

6. It is submitted on behalf of the Respondent-Society that present petition is hit by doctrine of delay and laches, inasmuch as there is unexplained delay of about 15 months in filing the present petition.

7. Reasons for delay have been stated in paragraphs 4 of the petition. It is stated that Petitioner came to know about dismissal of the petition only in May, 2009, when she contacted her counsel and that thereafter application for supply of copy of the order was submitted and on receipt of the copy, present petition had been drafted and filed. Explanation given in para 4 of the petition is supported by an affidavit. Therefore, there should be no reason to disbelieve the same, especially when the order, copy Annexure P-3, shows that Petitioner herself was not present, when the same was passed.

8. Coming to the merits of the case, appeal of the Petitioner has been dismissed by the Deputy Director, on account of it's being barred by limitation. Deputy Directory, held in his order that delay from 30.11.2005, i.e. the date of award, Annexure P-1, to 31.8.2006 stood justified, but there was further delay of 87 days, in not applying for the copy of the award and this had not been explained.

9. It is true that the Petitioner did not offer any justifiable explanation for delay in procuring the copy of award, but that was delay of 87 days and only for this technicality, appeal ought not to have been dismissed, especially when a bare look at the award suggests that Arbitrator has not indicated anything in his award, showing how he has worked out the amount of Rs. 4058/-, payable by the Petitioner and how has he worked out two amounts of money, on account of interest. Arbitrator has observed that a sum of Rs. 4058/- was due to the

Petitioner, on account of principal. At the same time, he has observed that the Petitioner is entitled to a concession to the tune of Rs. 12,000/-. If that is so, Arbitrator was required to have indicated why no benefit of interest was being extended to the Petitioner on the amount of concession while he was awarding interest in favour of the Society, on the amount of Rs.4058/-, payable by the Petitioner. Reasons were required to be given qua this aspect of the matter also.

10. In view of the above stated position, present petition is allowed. Impugned orders are set aside and the matter is remanded to Arbitrator, with a direction to decide the same afresh, giving detailed reasons, in support of his findings and the order, and also by taking into consideration the observations made hereinabove. Parties are directed to appear before the Arbitrator on 6th August, 2010. Arbitrator shall dispose of the matter at the earliest possible and in any case by 31st October, 2010.

Writ petition stands disposed of accordingly.