

(2016) 01 DEL CK 0285

In the Delhi High Court

Case No : W.P. (C) 7625/2014 & CM No. 17968/2014

V.P. Yadav

APPELLANT

Vs

The Registrar Cooperative Societies and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Delhi Co-operative Societies Act, 1972 — Section 27, Section 29, Section 60, Section 61, Section 63

Delhi Co-operative Societies Act, 2003 — Section 112, Section 29, Section 70, Section 71

Citation : (2016) 226 DLT 621

Hon'ble Judges : Gita Mittal and I.S. Mehta, JJ.

Bench : Division Bench

Advocate : A.K. Singla, Senior Advocate and R.K. Gupta, Advocate, for the Appellant; Sandeep Kumar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—1. The writ petitioner assails the order dated 20th May, 2014 passed by the Delhi Cooperative Tribunal in Appeal No. 30/2010/DCT rejecting the petitioner's challenge to the award dated 21st December, 2009 passed by the Arbitrator in Arbitration Case No. 4148/06-07 under Section 71 of the Delhi Cooperative Societies Act, 2003.

2. One Smt. Chandana Devi was a member of Sukhdham Cooperative Group Housing Society Limited, respondent No. 2 herein (referred to as "Society" hereafter). The Society sought reference of disputes under Section 60 of the Delhi Cooperative Societies Act, 1972 against Smt. Chandana Devi and two other persons for recovery of loan along with interest payable to Delhi Cooperative Housing Finance Corporation Limited ("DCHFC") which by an order dated 8th January, 2001, was referred to for adjudication under Section 61 of the Delhi Cooperative Societies Act, 1972.

3. According to the society, Smt. Chandana Devi was owing a sum of Rs.

84,184/- upto the quarter ending 31st December, 1999. The claim was made in the year 2000. Smt. Chandana Devi, unfortunately expired on 8th November, 2001, during the pendency of the arbitration proceedings. It is pointed out by Mr. Sandeep Kumar, learned counsel for the Society, that the present petitioner Mr. V.P. Yadav, son of the deceased member made an application on 5th February, 2002 for his impleadment as legal heir of Smt. Chandana Devi in the said arbitration proceedings.

4. The factum of the death of the member was thus taken on record by the Arbitrator on November, 2001 itself. The arbitration case culminated in an award dated 29th May, 2003 passed by the Arbitrator. So far as the claim against Smt. Chandana Devi was concerned, the Arbitrator noted that she had expired on 24th November, 2001 and, "therefore the dues against her may be attended to by the society as per rules on the subject". It is noteworthy that so far as the claim against another member, Mr. Sanjay Jain, which had been adjudicated along side is concerned, the Arbitrator has adjudicated the same.

5. It is evident from the above that the Arbitrator has not adjudicated upon the dues claimed by the Society against Smt. Chandana Devi. This Award was not assailed by the Society and hence it attained finality. Long thereafter, on 4th December, 2006, the Society filed a claim petition under Section 70 of the Delhi Cooperative Societies Act, 2003 against the present petitioner claiming an amount of Rs. 4,54,677/- as the outstanding dues towards the loan instalment and interest thereon upto 30th June, 2006. The Society, additionally, claimed payment of arbitration fee for a sum of Rs. 5,000/- and expenses @ 7.5% of the claim amount bringing the total claim to Rs. 4,93,778/-.

6. This claim was referred to arbitration by an order dated 2nd March, 2007 of the Registrar of Cooperative Societies. It is an admitted position that the order of reference was not assailed by the petitioner. This reference culminated in an ex-parte award dated 12th November, 2007 allowing the claim of the Society which was also non-speaking. On an appeal filed under Section 112 of the Delhi Cooperative Societies Act, 2003 by the petitioner/Y.P. Yadav, an order dated 19th November, 2008 was passed by the Delhi Cooperative Tribunal remanding the matter back for fresh arbitration proceedings to the Arbitrator, noting that the appellant was not given an opportunity of objecting to the claim of the Society and that the Award was also beyond the statutory period of limitation.

7. After remand, the petitioner contested the Society's claim against him inter alia on the ground that the claim of the Society was barred by time. The petitioner had specifically raised an issue that the Society had been pressing an objection that the petitioner had never been a member of the Society and that he was not the beneficiary of the flat.

These arbitration proceedings culminated in an Award dated 21st December, 2009. We find that the Arbitrator has noted the objection of the petitioner that the claim was filed after the expiry of the limitation period; that all the legal heirs

of the Smt. Chandana Devi had not been impleaded and that the Society had not substituted the name of the petitioner. Unfortunately, in the Award, the Arbitrator fails to deal with any of the above objections. Thus, the award has also failed to deal with the specific objection of the claim being barred by the limitation taken by the petitioner, though, the same has been noted.

8. We find that the petitioner's challenge to the arbitration award dated 21st December, 2009 by way of appeal under Section 112 of the Delhi Cooperative Societies Act, 2003 was also rejected by the Tribunal by the order dated 20th May, 2014.

9. The Tribunal has observed that the objection was mis-conceived. Interestingly, in para 14, the Tribunal notes the fact that Mr. V.P. Yadav had appeared on 5th February, 2002 before the learned Arbitrator and moved an application for substitution to bring the legal heirs of Smt. Chandana Devi on record, which was allowed on 5th March, 2002. The Award dated 21st December, 2009 passed by the Arbitrator and the order dated 20th May, 2014 passed in Appeal No. 30/2010/DCT are the subject matter of the current writ petition.

10. It is pointed out by Mr. A.K. Singla, learned Senior counsel for the petitioner, that after 2003, upon the death of a member, the liability of a deceased member of a society has to devolve upon and can be claimed by the society only in accordance with Section 29 of the presently applicable, Delhi Cooperative Societies Act, 2003. Our attention is drawn to the fact that the member in the instant case has expired in November, 2001 and therefore, the devolution of the liability and the entitlement of the society to claim the same from the legal heir has to be examined in accordance with the Delhi Cooperative Societies Act, 1972, which was then applicable.

11. Section 27 of the Delhi Cooperative Societies Act, 1972 is relevant which reads thus:

"SECTION-27

Liability of Past Member and Estate of Deceased Member

(1) Subject to the provisions of sub-section (2), the liability of a past member or of the estate of a deceased member of a co-operative society for the debts of the society as they existed,-

(a) In the case of a past member, on the date on which he ceased to be a member,

(b) In the case of a deceased member, on the date of his death, shall continue for a period of two years from such date.

(2) Where a co-operative society is ordered to be wound up under Section 63, the liability of a past member or of the estate of a deceased member who ceased to be a member or died within two years immediately preceding the date of the order of winding up, shall continue until the entire liquidation proceedings are

completed, but such liability shall extend only to the debts of the society as they existed on the date of his ceasing to be a member or death."

12. A comparison of the 1972 enactment as against the 2003 would show that the Section 27 of the Delhi Cooperative Societies Act, 1972 is pari- materia with Section 29 of the present enactment. It is explicit that so far as the liability of a deceased member of a Cooperative Society in 2001 is concerned, as per the statutory provisions, his/her liability crystallizes on the "date of his death" and continues only for a period of two years from such date.

13. It is submitted before us by Mr. Sandeep Kumar, learned counsel for the Society that Smt. Chandana Devi expired on 8th November, 2001. Therefore, her liability, has to be crystallized on the date of her death. This would obviously have been in terms of the claim made by the Society in the year 2000, which was for a sum of Rs. 84,184/- with interest upto the date of her death subject to any dispute by the member or her heirs. So far as the liability of legal heir is concerned, as per statute, that would be maintained only for a period of 730 days from 8th November, 2001, which period would have expired on or around 8th November, 2003.

14. It is an admitted position that the petitioner, as the legal heir of Smt. Chandana Devi had sought impleadment in her place after her demise, in the proceedings which were pending before the Arbitrator on the date of her death, and on 5th March, 2002, the impleadment application stood allowed. Yet the Arbitrator did not deem it fit to make an award against the petitioner in respect of the claim of the Society, which was under consideration before him and left it open for the Society to proceed further "in accordance with law", so far as deceased member's liability was concerned.

15. In our view, the Society having sought adjudication of its claim, could not have been diverted to yet another claim, so far as the liability of Smt. Chandana Devi was concerned. However, the Society was satisfied with the directions made by the Arbitrator and did not assail the same or seek adjudication of the claim. Admittedly, the Society had full knowledge of the death of the member in November, 2001 itself, yet the Society took no action at all for a period of over three years and opted to file another claim five years after the death of Smt. Chandana Devi, only in the year 2006. There can be no manner of doubt even it was not maintainable. The claim was filed way beyond the period of 730 days as prescribed in Section 27 of the Delhi Cooperative Societies Act, 1972 or Section 29 of the Delhi Cooperative Societies Act, 2003 and had to be so rejected.

16. It is unfortunate that neither the impugned award dated 21st December, 2009 nor the order of the Delhi Cooperative Tribunal dated 20th May, 2014 have bothered to deal with the requirement of the statute or the necessary objection of the present petitioner so far as limitation is concerned. On the contrary, the learned tribunal has callously rejected the same as min-conceived, influenced by the fact that the petitioner did not assail the final order of reference of the

dispute.

In our view, the failure to have assailed the reference could not prohibit the petitioner from contesting the maintainability of the claim on merits. In fact, even if the petitioner had not made an objection with regard to the limitation, the referring authority as well as the Arbitrator were bound to have examined the claim from this perspective. We may note that neither the Arbitrator nor the Delhi Cooperative Tribunal have held that the claim of the society was within the period as specified by the statute, the provisions whereof are mandatory. The Legislature has used the expression "shall" in Section 27 of the 1972 enactment as well as the 2003 enactment.

17. The above narration of facts would show that the claim against the petitioner filed on 4th December, 2006 was hopelessly barred by limitation, whether it be considered from 8th November, 2001, when Smt. Chandana Devi expired or on 5th March, 2002, when the impleadment application of the petitioner was allowed or from 29th May, 2003, when the Award was passed on claim filed by the Society, against the member.

In view thereof, the Award dated 21st December, 2009 passed in favour of the Society granting its claim as well as order dated 20th May, 2014 passed by the Delhi Cooperative Tribunal are not sustainable in law and are hereby set aside and quashed.

18. At this stage, Mr. A.K. Singla, learned Senior counsel on instructions from Mr. R.K. Gupta, learned counsel for the petitioner, very fairly submits that despite the above position, the petitioner is willing to pay the sum of Rs. 84,184/-, which was claimed against Smt. Chandana Devi as pending on the date of her death with a reasonable rate of interest, as this court may fix. In our view this offer is extremely fair, given the fact that the Society has lost the right to claim or enforce any liability in respect of Smt. Chandana Devi or her membership.

19. Accordingly, we direct the petitioner to deposit a sum of Rs. 84,184/- with interest @ 12% per annum upto the expiry of 730 days from 8th November, 2001, the date of death of Smt. Chandana Devi within four weeks from today. This deposit shall be without admission of liability and without prejudice to the rights and contentions of the petitioner.

20. We may make it clear that there is no adjudication upon the claim of Society against late Smt. Chandana Devi hereby.

21. It is an admitted position that the petitioner is son of Smt. Chandana Devi and is the only legal heir. He was so impleaded in her place in the first arbitration proceedings as well, therefore, the respondent-society shall take steps to transfer the membership of deceased member Smt. Chandana Devi in the name of the petitioner after the receipt of the deposit of the above said amount from the petitioner and on the formal request of petitioner for transfer of membership in his favour.

22. The respondent-society shall forthwith process the case and take steps for substituting the name of the petitioner in place of Smt. Chandana Devi within a period of four weeks thereafter.

23. The writ petition and the application are allowed in the above terms.