



2025:DHC:10629-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th November, 2025

+ **W.P.(C) 513/2024 & CM APPL. 2308/2024, CM APPL. 2309/2024**

THE BHAJANPURA CO-OPERATIVE URBAN THRIFT & CREDIT SOCIETY LTD.

THROUGH ITS SECRETARY/AUTHORIZED PERSON
C-62, GALI NO. 2, BHAJANPURA, DELHI-110053

....PETITIONER

Through: Mr. Rajeshwer Kr. Gupta with Ms.
Taanya Jivrajika, Advocates

versus

1. **THE REGISTRAR CO-OPERATIVE SOCIETIES**
OLD COURTS BUILDING
PARLIAMENT STREET,
NEW DELHI.

...RESPONDENT NO. 1

2. **SMT. JASBIR MALIK W/O LATE SH. SOHAN LAL MALIK**
R/O C/O SH. SUSHIL BEDI,
2ND FLOOR, HOUSE NO. 161-B,
NIT-1A, FARIDABAD, HARYANA.

...RESPONDENT NO. 2

3. **SH. SUDHIR MALIK S/O SH. SOHAN LAL MALIK**
R/O HOUSE NO. G-12,
EAST CHANDER NAGAR,



DELHI-110051.

...RESPONDENT NO. 3

Through: Mr. Sumit K. Batra and Ms. Priyanka Jindal, Advocates for GNCTD

Mr. Harjeet Narang with Ms. Twinkle Chawla, Advocates for respondent no. 3

Respondent no. 3 in person

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. Questioning the Award dated 4th August, 2021 passed by the Arbitrator, under the provisions of Delhi Cooperative Societies Act, 2003 the third party's step son *Mr. Sudhir Malik* preferred an appeal before the Delhi Cooperative Tribunal. The said appeal came to be allowed by impugned judgment and order dated 27th October, 2023.

2. The *Bhajanpura Co-operative Urban Thrift & Credit Society Ltd.*, in whose favour the Award was passed, has approached this Court invoking the extraordinary jurisdiction of this Court questioning the order of the Tribunal. The order of the Tribunal is questioned on following grounds:-



- a. *That the respondent no.3/appellant before the Tribunal has no locus to question the Arbitrator's Award.*
- b. *That the Civil Suit preferred by the party, who was appellant before the Delhi Cooperative Tribunal, has lost the same and in such an eventuality, the operation of interim order/injunction merged in the final decree and as such, the Tribunal ought to have regarded the same.*
- c. *That the amount is recoverable from the property under the Mortgage Deed dated 29th September, 2016, which was by deposit of the original title deed which is not required to be a registered document.*

3. As against above, counsel appearing for the respondent no.3/appellant before the Tribunal, submits that the suit was for simplicitor injunction and the title of the respondent no. 3/appellant before the Tribunal, is not adjudicated anywhere. According to him, the very Mortgage Deed dated 29th September, 2016, was found to be not registered, and the provisions of Section 17 of the Registration Act, 1908 will be attracted, which warrants the compulsory registration of such document. In absence of registration of such document, same cannot be read or accepted as an evidence. He would, as such, claim that the Tribunal was justified in recording a finding that the Award cannot be said to be sustainable in law.

4. We have considered the submissions.



5. The Tribunal mainly relied on the law laid down by the Delhi High Court in the matter of “**Madan Lal Sobti v. Rajasthan State Industrial Development and Investment Corporation Limited**”: **CM(M) No. 1128 of 2004**.

6. The Tribunal further reproduced the observations referred to the Delhi High Court in *para* 23 of the said judgment which is based on the finding recorded by the Apex Court in the matter of “**Rachpal Mahraj v. Bhagwandas Daruka and Others**”: **AIR 1950 SC 272**. It appears that while dealing with the contentions canvassed, the Tribunal recorded a finding that since the Mortgage Deed dated 29th September, 2016 is not a registered document, same cannot be accepted in evidence and as such, the date cannot be implemented and executed under the aforesaid Mortgage Deed.

7. The fact remains that the relevant observations relied on by the Tribunal have taken into consideration only part of the same. The correct part of the judgment on the Apex Court in the matter of **Rachpal Mahraj** (*supra*) reads thus:-

"When the debtor deposits with the creditor the title deeds of his property with the intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under Section 59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case, the deposit and the document both form integral parts of the



*transaction and are essential ingredients in the creating of the mortgage. As the deposit alone is not intended to create the charge and the document, which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration under Section 17, Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of such property is one hundred rupees and upwards. The time factor is not decisive. **The document may be handed over to the creditor along with the title deeds and yet may not be registerable, ... "***

(emphasis supplied)

8. The fact remains that the Apex Court in the matter of ***Rachpal Mahraj*** (*supra*) has considered, as regards the necessity of registration of a Mortgage Deed, when the mortgage was not based on simplicitor deposit of title deeds, but also by executing independent Mortgage Deed. As such, the said transaction has to be in terms of the Mortgage Deed which was reduced in writing along with the title deed. Both these documents form part of the act of mortgage to be completed by depositing the title deeds of the property. This appears to be the case in hand based on the factual matrix narrated. In such an eventuality, it was expected of the Tribunal to consider as to whether the law laid down by the Apex Court in the case of ***Rachpal Mahraj*** (*supra*) if considered in its entirety, can cover the case of the petitioner or not.



9. We are required to be cautious of provisions of Section 17(1)(b) of Registration Act, 1908 and Section 58(a) and (f) of Transfer of Property Act, 1882.

10. Section 17 of the Registration Act, 1908 contemplates compulsory registration of the document, which creates a charge in the form of mortgage. Such document which does not create a charge, but only records a transaction of mortgage is held to be not required for registration as could be inferred from the judgment of the Apex Court in the matter of **Rachpal Maharaj** (*supra*). The relevant paragraphs of the judgment of **Rachpal Maharaj** (*supra*), particularly, paragraphs 5, 7 and 8 are worth referring. The said observation reads thus:-

“...5. A mortgage by deposit of title deeds is a form of mortgage recognised by Section 58(f) of the Transfer of Property Act, 1882 which provides that it may be effected in certain towns (including Calcutta) by a person “delivering to his creditor or his agent documents of title to immovable property with intent to create a security thereon”. That is to say when the debtor deposits with the creditor the title deeds of his property with intent to create a security, the law implies a contract between the parties to create a mortgage, and no registered instrument is required under Section 59 as in other forms of mortgage. But if the parties choose to reduce the contract to writing, the implication is excluded by their express bargain, and the document will be the sole evidence of its terms. In such a case the deposit and the document both form integral parts of the transaction and are essential ingredients in the creation of the mortgage. As the deposit alone is not intended to create the charge and the document, which constitutes the bargain regarding the security, is also necessary and operates to create the charge in conjunction with the deposit, it requires registration under Section 17 of the Registration Act, 1908, as a non-testamentary instrument creating an interest in immovable property, where the value of



such property is one hundred rupees and upwards. The time factor is not decisive. The document may be handed over to the creditor along with the title deeds and yet may not be registrable, as in *Obla Sundarachariar v. Narayanna Ayyar* [*Obla Sundarachariar v. Narayanna Ayyar*, (1930-31) 58 IA 68 : 1931 SCC OnLine PC 2] or, it may be delivered at a later date and nevertheless be registrable, as in *Sir Hari Sankar Paul v. Kedar Nath Saha* [*Sir Hari Sankar Paul v. Kedar Nath Saha*, (1938-39) 66 IA 184 : 1939 SCC OnLine PC 25].

...7. There are numerous decisions, some of them not easy to reconcile, where this question was considered with reference to the document concerned in the particular case. It is unnecessary to review them, as the two latest pronouncements of the Privy Council, to which reference has been made, aptly illustrate cases falling on either side of the line. In *Obla Sundarachariar v. Narayanna Ayyar* [*Obla Sundarachariar v. Narayanna Ayyar*, (1930-31) 58 IA 68 : 1931 SCC OnLine PC 2] a signed memorandum was delivered to the mortgagor along with the title deeds of certain properties deposited as security. The memorandum stated “As agreed upon in person, I have delivered to you the undermentioned documents as security,” and listed the title deeds deposited. It was held that the memorandum was no more than a mere record of the particulars of the deeds and did not require registration. The criterion applied was: (IA p. 74)

“... no such memorandum can be within the section [Section 17 of the Registration Act] unless on its face it embodies such terms and is signed and delivered at such time and place and in such circumstances as to lead legitimately to the conclusion that, so far as the deposit is concerned, it constitutes the agreement between the parties.”

8. In *Sir Hari Sankar Paul v. Kedar Nath Saha* [*Sir Hari Sankar Paul v. Kedar Nath Saha*, (1938-39) 66 IA 184: 1939 SCC OnLine PC 25] the title deeds were deposited accompanied by a memorandum when part of the advance arranged for was made. Some days later when the balance



was advanced, another memorandum was delivered superseding the earlier one, and this was a formal document stating the essential terms of the transaction “hereby agreed” and referred to the moneys “hereby secured”. It also conferred an express power of sale on the mortgagee. Lord Macmillan after reviewing the earlier decisions of the Board, held that the document required registration, observing: (IA p. 197)

“... where, as here, the parties professing to create a mortgage by a deposit of title deeds contemporaneously enter into a contractual agreement, in writing, which is made an integral part of the transaction, and is itself an operative instrument and not merely evidential, such a document must, under the statute, be registered.”

(emphasis added)

11. As such, the position of law, as summarized, is that in case if the mortgage contemplated under Section 58(f) of Transfer of Property Act, 1882 by deposit of title deeds is accompanied by a Memorandum recording the fact of deposit and giving particulars of the transaction, whereunder the rights and liabilities of the parties had been orally agreed upon, it does not warrant registration under Section 17 of the Registration Act, 1908. However, if the reduction in writing of a contractual agreement in regard to creation of the mortgage by deposit of title deeds contains also creation of charge, in such an eventuality, the registration is mandatory under Section 17 referred above.

12. In our opinion, the Tribunal instead of referring to the entire position of law as reflected hereinabove, in a cryptic manner, proceeded to consider the part of the judgment in the matter of ***Rachpal Maharaj***



(*supra*) and reached an unmaturred finding regarding requirement of registration of the document. Not only the order impugned can be termed as suffering from non-application of mind as the aforesaid provision of law is not looked into, but also such conduct, in our opinion, amounts to denial of hearing, thereby violating the principles of natural justice guaranteed under Article 14 of the Constitution of India.

13. As regards, the *locus* of the respondent no. 3 to prefer an appeal before the Tribunal is concerned, we are not inclined to go into that aspect of the matter, particularly having regard to the dismissal of the suit for injunction, as the said issue can be dwelled upon by the Cooperative Tribunal, if so canvassed by the petitioner post this order of remand.

14. That being so, we deem it appropriate to quash and set aside the impugned judgment and order dated 27th October, 2023 passed by Delhi Cooperative Tribunal.

15. We restore the appeal preferred by respondent no. 3/appellant before the Tribunal to the file of Delhi Cooperative Tribunal before whom the respective parties to the present petition shall appear on 15th December, 2025.

16. All the contentions of the respective parties are kept open and we expect the Tribunal to look into the same on its own merit, without being influenced by the finding recorded hereinabove.

17. We expect the Tribunal to conclude the hearing by deciding the appeal in question within a period of four months from the date of appearance of the parties.



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18. The present petition stands disposed of accordingly.
19. Pending applications are rendered infructuous.
20. A copy of this judgment be uploaded on the website of this Court forthwith.

**NITIN WASUDEO SAMBRE
(JUDGE)**

**ANISH DAYAL
(JUDGE)**

NOVEMBER 28, 2025/pr/ay/st