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

Date of decision: 3rd September, 2026
Uploaded on: 9th September, 2026

\# **CNR No. DLHC010412562026**

\+ **W.P.(C) 12733/2026**

MOUNT EVEREST CGHS LTD .....Petitioner

Through: Mr. Shivam Goel, Ms. Ramya S. Goel, Ms. Sanya Sharma & Ms. Ishika Kanyal, Advs.

versus

REGISTRAR COOPERATIVE SOCIETIES & ORS......Respondent

Through: Mr. Shashi Pratap Singh, Ms. Laqshyaa Saluja & Ms. Anamika Tyagi, Advs. for R-1.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

<u>CM APPL. 59193/2026 (for exemption)</u>

2. Allowed, subject to all just exceptions. Applications are disposed of.

<u>W.P.(C) 12733/2026 & CM APPL. 59192/2026 (for interim relief)</u>

3. The present petition has been filed by the Petitioner under Article 226 of the Constitution of India, *inter alia*, assailing the impugned judgement dated 2nd April, 2026 passed by the Delhi Co-operative Tribunal in *(hereinafter, 'DCT')* in ***Appeal No.102/2024/DCT*** as also the impugned award dated 3rd April, 2023 passed by the Respondent No. 3 in ***Arbitration***

Case No.72/DR/ARB/21-22.

4. *Vide* the impugned judgement, the arbitral award dated 3rd April, 2023 *(hereinafter, 'the impugned award')* has been upheld by the DCT.

5. The brief background is that the Respondent No. 2- Mr. Sudhanshu Dutt had obtained membership of the Petitioner-society namely Mount Everest C.G.H.S. Pvt. ltd. *(hereinafter, 'the Society')* and the said Society was to allot flats to the members, some time in June, 2000.

6. Respondent No.2 had made payment of a sum of Rs. 8,60,110/- to the Society, against the application, admission fee and demands of the Society. However, due to various reasons, the Delhi Development Authority *(hereinafter, 'DDA')* had blacklisted the Society. At that stage, Respondent No.2 is stated to have sought withdrawal of the amount paid to the Society along with interest *vide* letter dated 9th September, 2000. The relevant extract of the said letter reads as under:

> " *To*
> *The Hon. Secretary,*
> *The Mount Everest Co-operative*
> *Group Housing Society Ltd.*
> *K-9, Khirki Extension,*
> *Malviya Nagar, New Delhi-110017*
> *Sir,*
>
> *We want to withdraw xxx. Society due to difficulty face by xxx. ervicing the loan taken for xxx. of the cost of the flats.* ***Therefore my request that the amount paid by us may be refunded to us along with 15% interest which is paid by us to HDFC and other lenders.***
>
> *Thanking you.*
> *Yours faithfully*
> *Sudhanshu Dutt*
> *Surabhi Dutt"*

7. The Society, however, had communicated to the member that he would be refunded the amount along with interest @7%, *vide* its letter dated 30th September, 2000. The relevant extract of the said letter reads:

> *"Mr. Sudhanshu Dutta*
> *Ms. Surabhi Dutt*
> *615, Ranka Court*
> *18 Cambridge Layout*
> *Bangalore-8*
>
> ***Sub: Withdrawal of membership & refund of deposited amount***
>
> *Dear Member,*
> *Please refer to your letter dated 9t hSeptember, 2000 regarding withdrawal from the membership of the society & refund of deposited money.*
>
> ***This is to confirm that your request has been accepted by the society & the deposited money will be refunded alongwith interest 7% as per rule applicable as soon as we have the replacement of your membership.***
> *Thanking you,"*

8. A sum of Rs. 5,00,000/- is stated to have been refunded to the Respondent No.2 *vide* letter dated 5th October, 2000 as part payment. The remaining amount of Rs. 3,60,000/- remained unpaid.

9. In respect of the said amount, which was unpaid, various letters were written by Respondent No.2 seeking refund.

10. Litigation ensued between the Managing committee of the society and the Respondent No.2, however, no progress was made in respect of the refund.

11. Thereafter, a writ petition was filed by the Respondent No.2, being ***W.P.(C) 6540/2007*** which was decided on 3rd August, 2010. Since the Respondent No.2 had requested to withdraw from the society and as part

payment had been made by the society, in the said writ petition, the Court in paragraph 3 had observed as under:

> *"... The result of al1 the scrutiny is that there is now a final list of 132 members. We may note that it is alleged that there are four other members who have however either partly or wholly taken back refund. and have not been found to be eligible to be included in the list nor in any litigation initiated by them pending. The result of this is that it is these 132 members who have to be allotted flats."*

12. In view of the fact that the Respondent No.2 was given partial refund of the amounts deposited by him, no allotment of flat was made to the Respondent No.2.

13. Pursuant thereto, Respondent No.2 initiated proceedings under Section 70 and 71 of the Delhi Cooperative Societies Act, 2003 *(hereinafter, 'DCS Act')* seeking recovery of the balance unpaid amount, leading to the impugned award. The operative portion of the arbitral award reads as under:

> *"Under the circumstances, I have considered the facts of the claimant, documentary evidence placed on record and after hearing both parties,* ***I deem it appropriate to pass an award in favour of the claimant and against the defendant society for the reliefs claimed as (i) Rs. 3,60,000-00 being Principle amount; (ii) interest @ 7% (as per letter of the defendant society dated 30.09.2000) per annum from 05.04.1999 i.e. the last payment made by the claimant, till actual payment is made; (iii) Arbitration fee of Rs. 5,000/- and (iv) costs @7½ under Rule 85(5) of DCS Rules 2007, to be paid by the defendant society to the claimant.***
>
> *The Award is passed accordingly.*
>
> *Issued under my hand & seal on this 3rd day of April, 2023."*

14. Thereafter, an appeal was filed by the Society before the DCT against the impugned award. The DCT considered the entire matter including the

question of limitation and observed that the impugned award does not deserve to be interfered with.

15. Mr. Goel, ld. Counsel for the Society has vehemently urged before the Court that Respondent No.2 has invoked arbitration in a belated manner. It is further submitted that the claim petition under Section 70 of DCS Act was barred by limitation, and hence the refund could not have been granted. Mr. Singh appearing for the RCS submits that both the orders are well-reasoned and no interference is called for.

16. The Court has considered the matter. The issue as to whether the claim of the Respondent No.2 was barred by limitation or not has been dealt with by the DCT in paragraph 7 of impugned order. The said paragraph is as under:

> *"7 There is no dispute to the fact that respondents/ claim petitioners deposited an amount of Rs.8,60,000/- each towards cost of the flat. It is also not disputed that they have been refunded an amount of Rs.8,60,000/- i.e. Rs.5,00,000/- to Sudhanshu Dutt and Rs.3,60,000/- to Surbhi Dutt. It is also not disputed that the balance amount of Rs.8,60,000/- has not been refunded. As per the best case of appellant/ Society, the claim petitioners have not raised fresh demands after 03.08.2010, when the writ petition came to be disposed of. It is certainly not the case of appellant that the amount stood refunded or that the amount was not deposited by the claim petitioners. The refund is sought to be defended only on the ground of delay. Referring to Sec.-70 of the Delhi Co-operative Societies Act (hereinafter referred to as 'the DCS Act'), it is submitted that the claim petition could have been instituted at best within 6 years of the cause of action having accrued. Reliance has been placed upon **Suresh Chand Jain' s** case **(supra)**. We have applied our minds to the law laid down in the cited judgement. A study of the same reveals that amount of Rs. 40,000/- which was deposited by the writ petitioner*

towards entry fee was sought to be refunded for the first time in the year 2009 and the deposit had been made on 07.07.1999. There was thus a delay of almost 10 years in raising the issue for the first time. The Hon'ble High Court, therefore, held that there was a delay and the claim petition was time barred . The facts in the present case are absolutely distinguishable. ***In the present case, demand was raised for the first time in the year 09.09.2000 itself and the deposit had been made in the 1998-1999. There was, thus, no delay in making the first claim for refund. Thus, there was absolutely no delay in making the first claim for refund. Society acknowledged its liability to refund and the fact of deposit, vide its communication dated 05.10.2000, when it partly refunded the amount to each of the claim petitioners. There are on record communications till the year 2006, when the claim petitioners from time to time reminded the appellant/ society of its claim and society acknowledged the same. The fact of part refund was also pleaded in writ petition filed by the claim petitioners and noticed by the Hon'ble High Court of Delhi, in its judgement, dated 03.08.2010. Society's challenge to the writ petition to the judgement rendered by the Hon'ble High Court of Delhi in writ petition is stated to be still pending before the Hon'ble Supreme Court of India. Therefore, it is not a case where the claim of the claim petitioners has become stale or is hit by delay and lashes.*** *In fact, the first argument of Sh. Tarun Aggarwal, ld. counsel that the audit is pending and the report is expected soon, also acknowledges the claim of the claim petitioners to be genuine and not stale."*

17. As can be seen from the impugned order of the DCT, it has been made clear that the payments were in 1998 and 1999 and the initial refund application was made by Respondent No.2 in 2000 itself.

18. Thereafter, the Society had agreed that it would refund the unpaid amount. Correspondences ensued till 2006, and since then, Respondent No.2 has been entangled in litigation with the Society.

19. Thus, the Respondent No.2 never gave up his claim for the unpaid refund and continued to be engaged with the Society or litigate with the Society. In the opinion of this Court as well, it cannot be held that the claim of the Respondent No.2 was barred by limitation.

20. Moreover, the scope of writ jurisdiction against such orders is also quite limited, and this Court ought not go into the factual aspects. There is no perversity or incorrect exercise of jurisdiction either by the arbitrator or by the DCT. This Court, in ***Jagdish Singh Chauhan v. Lt. Governor of Delhi*, 2025 SCC OnLine Del 8783**, which was a matter involving a dispute between a claimant who was a member of the Society and the Society, arising under Section 70 of the DCS Act, has held that this Court, exercising its extraordinary jurisdiction under Article 226, will not interfere, absent any infirmity in findings of the arbitrator and the DCT. In ***Jagdish Singh Chauhan (supra)***, the Court relied upon the decision of the Supreme Court in ***Ajay Singh v. Kacheru, 2025:INSC:9***, and observed:

> *"[…] 33. The orders passed by Arbitrator, thereafter confirmed by the DCT are clear, though concise, it cannot be faulted, for the reason that this Court does not find any infirmity with the finding that no evidence has been provided. Moreover, claims were also made before the District Consumer Forum, which were also dismissed by both the District Consumer Forum, as well as, by the State Commission in Appeal.*
>
> ***34. <u>In these circumstances, the Court is not going to exercise its extraordinary jurisdiction for this purpose. In</u>***

<u>this regard, the opinion of the Supreme Court in Ajay Singh v. Kacheru, 2025:INSC:9 may be noted as under:</u>

<u>'17. It is a well-established principle that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot reappreciate the evidence and arrive at a finding of facts unless the authorities below had either exceeded its jurisdiction or acted perversely.</u>

18. On the said settled proposition of law, we must make reference to the judgment of this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram. The relevant portion thereof reads as under:

> *"16. … It is well settled that the High Court can set aside or ignore the findings of fact of an appropriate court if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the courts below have come or in other words a finding which was perverse in law. This principle is well settled. In D.N. Banerji v. P.R. Mukherjee [(1952) 2 SCC 619] it was laid down by this court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities. …"*

(Emphasis Supplied)

20. Observations similar in nature were made in Krishnanand v. Director of Consolidation, wherein it was held that:

"12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for reappreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. …"

(Emphasis Supplied)

21. ***In our considered view, the High Court has committed an error of law and facts in setting aside the concurrent findings in both the impugned judgment and order. There was no basis for the High Court to ignore the findings of the authorities and come to its own conclusion by appreciating the evidence on record. The same was outside the purview of Article 226 of the Constitution of India in the absence of any perversity or illegality afflicting the findings of the authorities****.*

(Emphasis Supplied)"

21. Applying this settled principle to the facts of the present case, the DCT, in paragraph 7 of the impugned order, extracted hereinabove, has itself undertaken a detailed examination of the record and found, as a matter of fact, that the deposit of Rs. 8,60,000/- and the part-refund were never in dispute, that the demand for the balance amount was raised without delay in the year

2000 itself, and that the Society had continued to correspond with and acknowledge its liability towards Respondent No. 2. These are findings of fact arrived at on an appreciation of the documentary record, and it cannot be said that they suffer from any perversity, or that the DCT or the arbitrator exceeded their jurisdiction in arriving at them.

22. Under these circumstances, this Court is not inclined to entertain the present writ petition. The same is dismissed. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

SEPTEMBER 3, 2026
dj/sm