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

% *Date of Decision : 06.03.2025*

\+ **W.P.(C) 2839/2025 & CM APPL. 13451/2025**

THE BHAJANPURA CO OP URBAN T/C SOCIETY LTD.

.....Petitioner

Through: Mr Vipin Dilawari and Mr Hemant Pathak, Advocates.

versus

MUKESH KUMAR & ORS.

.....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (*ORAL*)

1. The petitioner – a cooperative Society – has filed the present petition, *inter alia,* impugning an order dated 22.05.2023 (hereafter ***the impugned order***) passed by the Delhi Cooperative Tribunal (hereafter ***the Tribunal***) in appeal No.033/2017/DCT captioned *Mukesh Kumar & Others v. The Bhajanpura Co-op. Urban T/C Limited & Others.*

2. By the impugned order, the learned Tribunal allowed the respondents appeal against an Arbitral Award dated 12.11.2010 (hereafter ***the impugned award***). In terms of the impugned award, an amount of ₹2,15,168/- along with further interest at the rate of 15 per cent (plus 3 per cent) per annum with effect from 01.11.2010, was awarded in favour of the petitioner society.

3. The petitioner society had loaned a sum of ₹1,20,000/- to respondent no.1 (principal debtor) on 07.11.2006. The same was required to be paid along with interest at the rate of 15 per cent per annum in monthly instalments and respondents no.3 to 6 stood sureties for performance of the repayment obligations. The respondents had defaulted in repayment of the loan.

4. In the aforesaid context, the petitioner had also instituted the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (hereafter ***the NI Act***) in respect of dishonoured cheque for an amount of ₹7,07,151/-. It is the case of the petitioner that an amount of ₹1,81,785/- was due from respondent no.1 on the date of the dishonour of the cheque as well as certain amounts in respect of other loans that were advanced to other parties for which respondent no.1 had stood as a surety, were also payable.

5. The controversy in the arbitration as well as the learned Tribunal is confined to the repayment of the loan of ₹1,20,000/-, availed by respondent no.1. In the course of proceedings initiated under Section 138 NI Act, the parties were referred to the *Mega Lok Adalat*, which was held on 24.10.2010.

6. Concededly, the parties had appeared before the Lok Adalat on the scheduled date and had settled their disputes. It is relevant to refer to the order dated 24.10.2010 passed by the *Mega Lok Adalat*, which reads as under: -

> "CC No.
> 24.10.2010
> Present: Sh. S.S. Badhoria, AR of the
> Complainant.
> Sh. M.K. Singh, Ld. Counsel for the

accused along with the accused.

The settlement has been arrived at between the parties. The terms are as under: -

> Without prejudice to the claim of the complaint qua guarantor for the other principal borrowers, the complainant has agreed to settle the instant case are in the sum of Rs. 1,94,958/payable in 40 EMIs each in the sum of Rs. 5,000/- PDCs towards the effect shall be furnished to the complainant, on receipt whereupon, the complainant agreed to withdraw the instant case.
> List on 08.11.10"

7. In view of the aforesaid settlement, the proceedings instituted by the petitioner under Section 138 of the NI Act was disposed of and the respondents were acquitted. Notwithstanding that the parties had settled the disputes before the Lok Adalat, the said fact was not brought to the notice of the learned Arbitrator. This led the learned Arbitrator to render the impugned award under Section 70 of the Delhi Cooperative Societies Act, 2003 (hereafter ***the DCS Act***).

8. The impugned award indicates that none of the respondents had appeared before the learned Arbitrator and the claim was decided *ex parte.*

9. Aggrieved by the proceedings initiated for recovery of the amount awarded, the respondent no. 1 filed the aforementioned appeal before the learned Tribunal. The said appeal was allowed in terms of the impugned order. The learned Tribunal concluded that the settlement arrived at between the parties before the Permanent Lok Adalat had in fact novated the terms of the agreement and therefore, it would not be open for the petitioner to seek recovery of the amount computed on the basis of the original

agreement between the parties. The petitioner's remedy was, thus, confined to enforce the terms of the settlement arrived at before the *Mega Lok Adalat*.

10. The learned counsel appearing for the petitioner, does not dispute that the settlement arrived at before the *Mega Lok Adalat* is binding upon the parties. He contends that since the respondents had failed to discharge their obligation in terms of the settlement, the petitioner was entitled to enforce the original agreement.

11. We are not persuaded to accept this contention. The terms of the settlement arrived at between the parties before the *Mega Lok Adalat* did not include any specific stipulation that in the event of failure to perform the terms of settlement, the petitioner would have recourse to enforce the original agreement. The petitioner has also not issued any communication terminating the settlement agreement.

12. We find no infirmity with the decision of the learned Tribunal holding that the terms of settlement arrived at between the parties before the Mega Lok Adalat is binding upon the parties and the terms of the original contract between the parties stood novated. Thus, the apposite remedy available to the petitioner, in case of a default in compliance with the terms of the settlement agreement, was to enforce the settlement agreement, which is recorded in the order passed by the Mega Lok Adalat.

13. It is also relevant to observe that in the event the petitioner had disclosed the settlement arrived at between the parties, the learned Arbitrator would not have delivered the impugned award.

14. It is also relevant to note that even though the terms of the settlement did not provide for any interest, the learned Tribunal has directed the respondents to pay interest at the rate of 9 per cent per annum on the

remaining amount after adjusting the amount already received by the petitioner in terms of the settlement.

15. The learned counsel for the petitioner submits that the impugned order is also vitiated as the learned Tribunal had failed to consider that the appeal preferred by the respondents was hopelessly barred by limitation. He submits that the respondents had also filed an application seeking condonation of delay of 110 days in filing the appeal. However, the impugned order does indicate that the said application was considered.

16. There is merit in the petitioner's contention that the Tribunal has not considered the question of delay and has proceeded to decide the appeal preferred by the respondents on merits. However, it does appear that the petitioner had not taken objection in this regard as the impugned order does not indicate that any submissions were advanced on the question of delay.

17. However, we do not consider it apposite to remand the matter to the learned Tribunal to consider afresh for the reason that the respondents' application for condonation of delay has not been considered. This is essentially for two reasons. First, the petitioner does not appear to have raised any objection regarding the delay before the learned Tribunal. And, second, that the respondents have shown sufficient cause for the said delay. The application filed by respondents indicates that the respondents had not received the copy of the impugned award at the material time. The certified copy of the impugned award was provided to the respondents on 07.10.2016 in recovery proceedings (Recovery Case no.1384/11/12/36905) commenced by the petitioner.

18. The respondents had also stated that after receipt of the impugned award, respondent no.1 had made repeated efforts including by writing

letters dated 16.12.2016 and 30.12.2016 to obtain the necessary loan documents, statements of accounts etc. The petitioner had responded to the same by letter dated 10.02.2017, which was received by respondent no.1 on 20.02.2017. However, the respondents state that the copy of the record was not received by the respondent.

19. In our view, remanding the matter to the learned Tribunal would, in the given circumstances, only serve to prolong the proceedings. It is also settled law that remedies under Article 226 of the Constitution of India are discretionary remedies. In the given facts, we do not consider it apposite to entertain the present petition.

20. The petition is, accordingly, dismissed. Pending application is disposed of. We, however, clarify that this order would not preclude the petitioner from taking steps to enforce the terms of the settlement arrived at between the parties before the Mega Lok Adalat.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 06, 2025
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Click here to check corrigendum, if any