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

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Date of Decision : 24.02.2025+ **W.P.(C) 11344/2023 & CM APPL. 44129/2023****DELHI CO OPERATIVE HOUSING FINANCE
CORPORATION LTD**

.....Petitioner

Through: Ms Shobhana Takiar, Mr Prateek
Dhir, Mr Kuljeet Singh and Mr
Shivam Takiar, Advocates.

versus

**GHALIB MEMORIAL CO OPERATIVE GROUP
HOUSING SOCIETY LTD & ANR.**

.....Respondents

Through: Mr Harish Kumar Mehra, Advocate
for R1.
Ms Srishti Sharma and Mr Ankur
Arora, Advocates for R2.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)*****Introduction***

1. The Delhi Cooperative Housing Finance Corporation Limited (hereafter *the DCHFCL*) has filed the present petition, *inter alia*, impugning an order dated 24.03.2023 (hereafter *the impugned order*) passed by the learned Delhi Co-operative Tribunal (hereafter *the Tribunal*). DCHFCL



claims it is entitled to compound interest in terms of an arbitral award (as modified (hereafter *the Award*), whereby it was awarded *pendente lite* and future interest at the rate of 15.5% per annum. By the impugned order, the learned Tribunal rejected DCHFCL's contention that it is entitled to recovery certificate on the aforesaid basis and has interpreted the arbitral award in question as awarding simple interest on the amount as claimed from the period of institution of the claim till realisation.

2. The Tribunal has examined the Award and concluded that it was impermissible for the Tribunal in enforcement proceedings to go behind the Award in question.

3. Ms Takiar, the learned counsel appearing for DCHFCL submits that in terms of the contract between DCHFCL and respondent no.1/Ghalib Memorial Cooperative Group Housing Society Limited, Ghalib Apartment, Plot No.27, Road No.42, Parwana Road, Pitampura, New Delhi – 110034 (hereafter *the Society*), DCHFCL was entitled to charge compound interest on quarterly rests. Therefore, the arbitral award in question (as modified) is required to be considered as awarding *pendente lite* and future interest at the rate of 15.5 per cent per annum compounded with quarterly rests.

The Controversy

4. The limited question to be addressed in the present petition is whether the decision of the Tribunal in holding that the DCHFCL is not entitled to compound interest at the rate of 15.5 per cent on the amount as claimed in terms of the Award, is contrary to law and warrants any interference in these proceedings.



Factual Context

5. Briefly stated, the relevant facts to address the controversy are that DCHFCL is engaged in the business of extending financial facilities to Cooperative Group Housing Societies in Delhi.

6. DCHFCL states that on or about 06.05.1986, the Society had applied for loan, which was subsequently granted. Thereafter, the loan amount of ₹110.40 Lacs was disbursed by DCHFCL to the Society against the collateral of the land owned by it. The Society also executed the mortgage deed in respect of its property to secure its repayment obligations. In terms of the loan agreement between DCHFCL and the Society, it was agreed that the loan would carry interest at the rate of thirteen per cent per annum or such higher rates as may be fixed by DCHFCL. The interest was payable on quarterly basis at the end of each quarter (as on 31st March, 30th June, 30th September and 31st December) of each year. DCHFCL claims that it was also entitled to charge additional interest at the rate of 2.5 per cent per annum on the overdue payment in the event the Society failed and neglected to pay the instalments on the due dates.

7. The Society defaulted in servicing the loan as agreed. This led to a dispute, which was referred to arbitration under Section 61 of the Delhi Cooperative Societies Act, 1972 (hereafter *the DCS Act*).

8. Before the learned arbitrator, DCHFCL made a claim for an outstanding instalment amounts aggregating to ₹1,39,02,782/-. The said amount included the principal amount, insurance charges, interest, as well as penal interest. DCHFCL also claimed *pendente lite* and future interest. The



said proceedings culminated into the Award. The Award does not mention the date on which the Award was made, but the learned counsel submit that it was delivered on 27.12.1999.

9. The operative part of the said Award is set out below: -

“7. In the circumstances, I award and direct the Defendant No.1 to pay the claimant the amount of Rs.1,39,02,782 (which is the amount of defaulted quarterly installments from 30.6.90 to 30.6.97) along with interest @ 26% for the period of pendency of the arbitration proceedings and even thereafter till its complete recovery from the Defendants.”

10. One of the members of the Society appealed the Award under Section 76 of the DCS Act before the Tribunal. However, the Tribunal did not interfere with Award except to the extent of the rate of interest as awarded, which was reduced from 26 per cent per annum to 15.5 per cent per annum. The conclusion as recorded in the said order dated 19.03.2008 is set out below: -

“In conclusion, the appellant’s prayer to set aside the award is rejected but the award is partly modified to revise the rate of interest on the DCHFCL loan from 26% to 15.5%”

11. The said decision was accepted by all the parties and none of them appealed the said decision. It is also material to note that the Tribunal accepted DCHFCL’s contention that since the agreement was between DCHFCL and the Society, the dispute regarding the amount payable by the individual members who had taken loan from the Society from the funds provided by DCHFCL would not bind DCHFCL. And there was no privity of contract between the members of the Society and DCHFCL. The Tribunal also noted that certain members had challenged the demands raised by the



Society and held that the same would be subject to resolution of the disputes between the Society and its concerned members.

12. The Tribunal also noted that certain members had sought recourse to remedies available under Section 61 of the DCS Act for resolution of such disputes. The Tribunal clarified that same would be decided on their own merits.

13. We consider it apposite to set out the following observations made by the Tribunal in its order dated 19.03.2018 in this regard:

“As regards the present award, since the DCHFC has already rolled back the rate of interest, there is no harm in amending the award to that extent. The other arguments raised by the DCHFC are very valid. It is true that in the original claim, the DCHFC had joined the society’s members as parties, but the arbitrator in his concluding para has only held the society to be liable to pay the balance dues of the DCHFC. Since the society failed to appear before the arbitrator the details of the defaulting members and their whereabouts were not available with the arbitrator and, therefore, he did not even try to serve notices on them. This may be also partly because some money paid by the members had been allegedly diverted by the society which was having a lot of mismanagement etc and was later on superseded by the RCS. In a society, the flats change hands from time to time, some times in an illegal manner and, therefore, it becomes very difficult to trace the members a particular point of time. Since the arbitrator has only held that the society is responsible to pay up the DCHFC’s dues no cause of appeal has arisen for the appellant directly from this award. If the society, after accepting the award, has issued recovery notices and if the appellant is objecting against the demand, the right course of action for his is to either challenge the recovery notice by way of a revision position before the Financial Commissioner or to file a



claim U/S 60. In fact, the society has already filed a claim against him, which is being separately contested by the appellant. In the circumstance, we have decided to reject the appeal and to confirm the arbitrator's award only with one modification i.e. that the rate of interest on the DCHFC loan would be calculated @ 15.5%. Because of this modification, the DCHFC will have to revise its demand and issue a fresh demand notice to society accordingly.”

14. In the meanwhile, DCHFCL filed a petition for execution of the Award, being Ex.617/2000-01, before the Assistant Collector. DCHFCL states it raised the demand against the Society and by an order dated 15.06.2009, the Assistant Collector proceeded to attach the property of the Society.

15. The Society furnished the list of defaulting members before the Assistant Collector and the said authority directed respondent no.2, who was one of the defaulting members to deposit the dues.

16. Respondent no.2 appeared and objected to the calculations of the outstanding amount. However, the same was rejected by an order dated 27.01.2017. Thereafter, Respondent no.2 impugned the said order dated 27.01.2017 by filing the revision petition before the Financial Commissioner, which this court is informed, was subsequently withdrawn in view of the impugned order.

17. The Society also filed objections before the Assistant Collector in regard to the computation of demand raised. The said objections were rejected by the Assistant Collector on 26.02.2018. The Society's application seeking review of the said order was also rejected by an order dated



09.04.2018.

18. The Society assailed the said orders dated 26.02.2018 and 09.04.2018 by way of the revision petitions before the Financial Commissioner. However, the Financial Commissioner dismissed the same for want of jurisdiction *vide* order dated 17.11.2022.

19. The Society has filed W.P.(C) No.3574/2018 captioned *Ghalib Memorial Cooperative Group Housing Society v. Government of NCT of Delhi & Others* impugning the said order dated 26.02.2018 passed by the Assistant Commissioner dismissing the objections raised by the Society, *inter alia*, regarding the computation of the amount payable to DCHFCL in terms of the Arbitral Award as modified by the Tribunal.

20. It is stated in the meanwhile, on 14.03.2019, respondent no.2 instituted an arbitral proceeding under Section 70 of the DCS Act before the learned arbitrator pertaining to the *inter se* disputes between respondent no.2 and the Society. DCHFCL was also made a party to the said proceedings. The said proceedings culminated in an award dated 14.03.2019. It is material to note that the learned arbitrator accepted the certificate of computation of the amount due and payable by respondent no.2 against the loan availed from the Society, which in turn was funded from the loan extended by DCHFCL to the Society. It is also material to note that the arbitrator accepted that the loan amount was required to be repaid along with interest at the rate of 15.5% per annum. Paragraph nos. 6 and 7 of the said award dated 14.03.2019 are reproduced below:

“6. The calculations prepared by Chartered Accountant of claimant mention every aspect in detail



and they are as per DCHFC formula. In the certificate it is mentioned that demand of loan at each quarter end is prepared as per the formula given by DCHFC in their booklet and defaults were chargeable to further interest @ 2.5% over and above the normal rate of interest. The certificate mentions that defaults have been worked out at each quarter end and interest charged accordingly.

7. The certificate mentions that default on the date of final payment of loan is also subject to penal interest @ 15.5% per quarter up to the final date of payment (as per DCHFC formula) making total dues of Rs1916090. The calculations by CA are correct and accepted.”

21. The society preferred an appeal against the said decision before the learned Tribunal being Appeal No.041/2019/DCT which was disposed of in terms of the impugned order.

22. The learned Tribunal examined respondent no.2's claim and the Award. Concededly, the same would be relevant as the Award, determining the amount payable by the Society to the DCHFCL, was the basis of the Society's claim against various members, who had availed of financial assistance from the Society.

23. The Tribunal noted that the disputes regarding the calculations of the amount due were on two counts. First, that the DCHFCL had capitalized penal interest at the rate of 2.5 per cent. And second, that it was charging compound interest. According to respondent no.2, the same was not permissible.

24. In the context of the said disputes, the learned Tribunal examined the Award and held as under:



“21. We have gone through the award dated 27.12.1999 whose operative part is as under:

“In these circumstances, I award and direct the Defendant No. 01 to pay the claimant an amount of Rs. 13,902,782/- (which is the amount of defaulted quarterly instalments from 30.06.1990 to 30.06.1997) along with interest @ 26% for the period of pendency of the arbitration proceedings and even thereafter, till its complete recovery from the Defendants.”

22. We may also reproduce the operative part of the order of the DCT dated 19.03.2008 passed in Appeal no.178/2000 which was filed challenging the above award, as under:

“In conclusion, the appellant's prayer to set aside the award is rejected but the award is partly modified to revise the rate of interest on the DCHFC loan from 26% to 15.5%”

23. The said award or the order of DCT have never been challenged by any party in any forum and have attained finality.

24. It is therefore clear that neither the award, nor the DCT order specifically mentions that the interest can be charged on compounding basis. The proposition that interest, if not specifically mentioned as compound interest, has to be understood as simple interest only as laid down by the above cited judgments, as indisputable.

25. However, the Ld. Counsel for the DCHFC has opposed this argument on the ground that the said award and the order of the DCT were never before the Arbitrator or before this Court for interpretation. They have always been understood to confirm to the clauses of the agreement between the parties and the mortgage deed as per which the interest of 13% is to be compounded on quarterly basis.

26. In our view, the award and the order of DCT form the very genesis of the present dispute. The whole



dispute in this case is about the calculations of outstanding dues of the Respondent No.1 to the Appellant society on account of allegedly unpaid dues of the DCHFC loan. The dues were being, calculated only because, in execution of the award dated 27.12.1999, the defaulting members were asked to pay their share of the dues as per the award. The dues of the Respondent No.01 and the Respondent No.02 will therefore, have to be calculated as per the said award, as modified by the order of the Delhi Cooperative Tribunal in appeal which finally comes to a simple interest of 15.5.% p.a. This clearly overrides any clause of the loan agreement which may be interpreted as allowing charging of compound interest.”

REASONS

25. As noted at the outset it is relevant to note that DCHFCL’s principal challenge is premised on the basis that it is not permissible to examine and alter the Award in any collateral proceedings. More importantly, it is DCHFCL’s case that the Tribunal has incorrectly interpreted the Award (as modified) to hold that it does not entitle it to charge compound interest. Thus, the interpretation of the Award as modified is central to the present controversy.

26. There is merit in the contention that the Award could not be modified or altered in collateral proceedings. However, we are unable to accept that the Tribunal is precluded from interpreting the same, given that the amounts due from individual members of the Society, who have availed loans, is required to be computed on the basis of the amount owed by the Society to DCHFCL against its borrowings.

27. In the aforesaid context, it is also material to note that the Society had



also challenged the orders in the enforcement proceedings on the ground that calculations were incorrect. The said challenge has since been withdrawn. It is also material to note that enforcement proceedings (Ex.617/2000-01/30) were also disposed of by the Assistant Collector in terms of an order dated 17.01.2024. Perusal of the said order indicates that the Assistant Collector had accepted the Society's contention that the interest payable to DCHFCL was required to be computed at 15.5 per cent.

28. We find no infirmity with the observations made by the learned Tribunal in the impugned order as we find no grounds to fault the Tribunal's interpretation that the Award (as modified) awarding *pendente lite* and future interest at the rate of 15.5 per cent simple interest. It is not necessary to examine whether the arbitrator in this case had any powers to grant compound interest as it is apparent from the plain language of the Award that the arbitrator has not awarded compound interest.

29. The Award is silent as to whether the rate of interest is simple interest or compound interest. Therefore, it must necessarily be construed that the arbitrator had awarded simple interest. The award of compound interest cannot be readily inferred without any express stipulation in this regard.

30. In *Municipal Council Thanesar & Others v. Virender Kumar & Others: (2020) 15 SCC 364* the Supreme Court has considered a similar issue. We consider it apposite to set out the following passage from the said decision: -

“9. As regards the second issue, the Executing Court correctly appreciated that the Award did not specifically state that the interest @ 7% per annum was to be awarded with quarterly rests. In fact, the Award did not specify anything; whether it be



quarterly rests or yearly rests. It simply awarded interest @ 7% per annum. Since the Award was completely silent on that aspect, at the stage of execution, no addition or alteration could be made in the operative directions issued in the Award. The Award had seen the challenges at three levels and at none of those stages, there was any modification in the operative directions of the Award.

10. The Executing Court found that it was doubtful whether the award of interest was @ 7% with quarterly rests or yearly rests. In fact, the situation was more fundamental, whether there was award of any compound interest at all. The Executing Court put it with yearly rests which the High Court in Revisions preferred by the appellants modified to quarterly rests. In our view, both the Executing Court and the High Court completely erred and awarded compound interest in favour of the respondents when the award had stipulated it to be 7% per annum simpliciter. The Award did not even remotely suggest that such award of interest would be with a direction that interest be capitalized on yearly or quarterly basis. It was pure and simple award of interest @ 7% and could not be taken to be a direction to award compound interest.”

31. The grievance of DCHFCL regarding the observations made by the Tribunal in regard to the interpretation of the Award are, unmerited.

32. In view of the above, we find no merit in the present petition. The same is, accordingly, the same is dismissed. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

FEBRUARY 24, 2025

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