

Prem Jeet Kumar

Vs

Surender Gandotra and Others

Civil Appeal No. 3237 of 1991

(L.M. Sharma, J.S. Verma JJ)

27.08.1991

JUDGMENT

J. S. VERMA, J.

1. Leave is granted.

2. Respondent 6, Jupiter Cooperative Group Housing Society Limited, was formed in 1979 for providing houses to its 130 members including the appellant Prem Jeet Kumar. The appellant was earlier the Secretary and then the President of the Society till 1985, by which time substantial construction had been completed. The members were allotted three-room flat for a sum of Rs 1,10,000. In August 1985, respondents 3, Registrar, Delhi Cooperative Societies, appointed an Administrator to look into the affairs of the Society since the appellant and other office bearers had held the office for more than two terms. The controversy giving rise to this proceeding relates the alleged discrepancy regarding purchase of some building material in January 1984, for the construction of flats for members of the Society in Vikas Puri at New Delhi. The New Managing Committee of the Society formed in September 1986, complained to the Registrar, Cooperative Societies alleging irregularities by the previous Managing Committee of which the appellant was the President. This matter was referred to arbitration by order dated October 12, 1989 passed by the Joint Registrar (Arbitration) Cooperative Societies, Delhi Administration. Respondent 1, Surender Gandotra was appointed the arbitrator, who gave his award on May 1, 1990. The relevant portion of the award is as under :

"It is also interesting to discuss the conduct of these two respondents of this case, Shri Poonam Dhand and Shri P.J. Kumar as they have been moving applications after applications in this court raising vicious and frivolous grounds just to delay the delivery of justice in this case. The miscellaneous applications relating to the dispute of jurisdiction of this court and then that since criminal proceedings are pending with the Delhi Police, proceedings in this court should be kept pending till final decision in the criminal proceedings. All these applications were properly attended, scrutinized and disposed of legally. It is also interesting that despite number of chances/opportunities having been given to the respondent to file reply to the main points of the claimant society, the defendants S/Shri Poonam Dhand and P.J. Kumar did not file any reply and followed delaying and dilatory tactics to defeat the ends of justice. Even today April 30, 1990, fixed for hearing none came from the side of S/Shri Poonam Dhand, P.J. Kumar either personally or through advocate. The advocate of the claimant society Shri Tomar argued that ex parte proceedings may be initiated against the respondents who have absented from these proceedings. In view

of these circumstances, and the conduct of respondents in this case right from the very inception of this case, there is no other alternative left for me but to proceed ex parte against the respondents S/Shri Poonam Dhand and P.J. Kumar.

Ex parte award is announced with the following details :

#Principal amount to be paid by the Rs 1,46,210.20 respondents to the Jupiter Cooperative Societies Limited, Vikas Puri, New Delhi Interest at the rate of 18 per cent from April 17, 1985 till all the dues are cleared by the respondents Cost allowed Rs 5,000.00##

With the above observations, ex-parte award is given against the respondents S/Shri Poonam Dhand, P.J. Kumar who are jointly and severally responsible to pay the Jupiter Cooperative Group Housing Society Limited, Vikas Puri, New Delhi, principle amount of Rs 1,46,210 plus 18 per cent interest from April 17, 1985 till the dues are cleared and costs of Rs 5000.

3. The appellant then filed an appeal under Section 76 of the Delhi Cooperative Societies Act, 1972 (hereinafter referred to as 'the Delhi Act') in the Delhi Cooperative Tribunal (respondent 2) challenging the award dated May 1, 1990. The Tribunal held that the arbitrator's act of proceedings ex parte against the appellant is justified and taking the view that the appeal had not merit, dismissed the same. There appellants then filed a writ petition in the High Court challenging the award and dismissal of his appeal by the Tribunal on July 3, 1990. The said writ petition has been dismissed by the High Court on October 10, 1990. It is in these circumstances that the appellant assails the award, dismissal of the appeal and then the writ petition. The argument of Shri Sorabjee, learned counsel for the appellant, is that it is Section 59 and not Section 60 of the Delhi Act which applies to the present case. In reply, Dr Chitale on behalf of the contrasting respondents contended that Section 60 relating to arbitration and not Section 59 pertaining to surcharge applies to the present case. Sections 59 and 60 of the Delhi Act, insofar as relevant, are quoted hereinbelow :

"59. Surcharge. - (1) If in the course of an audit, inquiry, inspection or the winding up of a co-operative society, it is found that any person, who is or was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, the Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him, by an order in writing in this behalf, to inquiry into the conduct of such person :

Provided that no such inquiry shall be held after the expiry of six years from the date of any act or omission referred to in this sub-section.

(2) Where an inquiry is made under sub-section (1), the Registrar may, after giving the person concerned an opportunity of being heard, make an order, requiring him to repay or restore the money or property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable."

"60. Disputes which may be referred to arbitration. - (1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society arises -

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society or liquidator, past or present, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased employee of the society, or

(d) between the society and any other co-operative society, between a society and liquidator of another society or between the liquidator of one society and the liquidator of another society,

such disputes shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceedings in respect of such dispute.

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of a co-operative society, namely :-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs or legal representatives of a deceased member, whether such debt or demand is admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of any officer of a society other than a society mentioned in sub-section (1) of Section 31.

(3) If any question arises whether a dispute referred to the Registrar under this section is or is not a dispute touching the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

#(4) * * * "##

4. In substance the contention of the learned counsel for the appellant is that the proper action to take in such a case is to resort to Section 59 dealing with surcharge and not to settlement of dispute

by arbitration since it is not one of the disputes which may be referred to arbitration in terms of Section 60 of the Delhi Act. It was argued that sub-section (2) of Section 60 is exhaustive and not merely illustrative which shows that the present dispute does not fall within the ambit of Section 60. Dr Chitale, on the other hand, asserted that it is sub-section (1) of Section 60 which indicates the true scope of Section 60 while sub-section (2) is merely illustrative and not exhaustive. It was urged that clause (c) of sub-section (1) of Section 60 expressly provides that if any dispute touching the constitution, management or the business of the cooperative society arises between the society or its committee and any past committee, any officer, agent or employee or any past officer of the society, the dispute shall be referred to arbitration.

5. Reliance is placed on behalf of the appellant on Chander Nagar Cooperative House Building Society Ltd. v. Ashok Ohri [AIR 1976 Del 299], wherein the learned Single Judge took the view that sub-section (2) of Section 60 of the Delhi Act is exhaustive and not merely illustrative. That decision overlooks the decision of this Court in Srirakulu [(1965) 1 SCR 186 : AIR 1965 SC 621 : (1965) 2 MLJ 111] referred hereafter and conflicts with it. Further consideration of the same is, therefore, not necessary.

6. Dr Chitale placed reliance on Pentakota Srirakulu v. Cooperative Marketing Society Ltd. [(1965) 1 SCR 186 : AIR 1965 SC 621 : (1965) 2 MLJ 111] to contend that this point was concluded against the appellant. In our opinion, the contention of Dr Chitale has to be accepted. The decision of this Court in Srirakulu [(1965) 1 SCR 186 : AIR 1965 SC 621 : (1965) 2 MLJ 111] was rendered with reference to the Madras Cooperative Societies Act, 1932 (hereinafter referred to as 'the Madras Act') wherein Section 51 relating to settlement of disputes by arbitration was the provision corresponding to Section 60 of the Delhi Act. Clause (c) of sub-section (1) of Section 51 of the Madras Act was substantially the same as clause (c) of sub-section (1) of Section 60 of the Delhi Act. The explanation in sub-section (1) of Section 51 of the Madras Act was substantially similar to clause (a) of sub-section (2) of Section 60 of the Delhi Act. The material part of Section 51 of the Madras Act, on the basis of which the decision was rendered in Srirakulu [(1965) 1 SCR 186 : AIR 1965 SC 621 : (1965) 2 MLJ 111] quoted therein is as under :

"51. Arbitration

Disputes : (1) If any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society) arises -

##(a) * * *(b) * * *##

(c) between the society or its committee and any past committee, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant, of the society, or

##(d) * * *##

Explanation. - A claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not, is a dispute touching the business of the society within the meaning of this sub-section."

7. In the Madras Act, Section 49 was the provision corresponding to Section 59 of the Delhi Act. It was, therefore, on the basis of similar corresponding provisions that the question arose for decision of this Court in Srirakulu [(1965) 1 SCR 186 : AIR 1965 SC 621 : (1965) 2 MLJ 111]. In Srirakulu [(1965) 1 SCR 186 : AIR 1965 SC 621 : (1965) 2 MLJ 111] also the facts disclosed in the inquiry that certain loss was caused to the society by the acts of past Managing Committee and, therefore, a special officer appointed to look into the affairs of the society made a claim under Section 51 of the Madras Act before the Registrar against the past President of the Society. It was held that the Registrar's order under Section 51 of the Madras Act could not be challenged. We do not find any significant difference between the provisions of the Madras Act which form the basis of this Court's decision in Srirakulu [(1965) 1 SCR 186 : AIR 1965 SC 621 : (1965) 2 MLJ 111] and Sections 59 and 60 of the Delhi Act with which we are concerned to justify taking a different view as suggested by learned counsel for the appellant. Following the view taken in Srirakulu, this appeal must fail. Consequently, the appeal is dismissed with costs quantified at Rs 5000.

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