

Case No.106/14

Veer Puru CGHS Ltd. Vs. Ms. Pooja Anand & Anr.

27.03.2015

Present : Sh. R.K. Modi, Counsel for the Petitioner.

: Sh. Rishi Anand on behalf of R-1.

1. Assistant Registrar, O/o RCS vide impugned order dated 19.02.2014, directed the Society to delete the name of appellant, i.e. Ms. Pooja Anand from the list of defaulters sent to the DCHFC for initiation of recovery proceedings against her. The Society was further directed to process her case for grant of membership under section 91 of DCS Act, 2003 within 15 days.

2. Vide this order dated 19.02.2014, Assistant Registrar also referred to the Award dated 11.01.2014 passed by Ld. Arbitrator Smt. Janak Juneja wherein vide para 14, it was ordered that :

“Accordingly, I order quashing of demand notice dated 23.03.2012 issued by the Society to the claimant for an amount of Rs.12,65,374/- as on 31.12.2011 and further direct the society to delete name of the claimant from the list of defaulter sent to the DCHFC for initiation of recovery proceedings against her.”

3. Society has filed the present revision petition against the Assistant Registrar's order dated 19.02.2014 on the following grounds :-

- (i) That no opportunity was granted to the society for putting its defense to the appeal despite service of the request letter dated 31.01.2014.
- (ii) That the appeal filed by the Respondent No.1 was barred by the limitation. As per section 91 of the DCS Act, 2003 read with rule 92 of DCS Rules 2007, an appeal can be preferred under section 91 of the DCS Act, 2003 only within 30 days from the date of rejection of the application for grant of membership. In the present case, the society had rejected the application of the appellant on 23.04.2013 and returned all the documents to the Appellant. The period within which the appeal in respect of the application can be preferred, expired after thirty days i.e. on 22.5.2013 and thus, the said appeal is barred by limitation.
- (iii) That the Respondent No.2 has failed to appreciate that the appeal is not signed by the Respondent No.1 and as such the same was liable to be dismissed on this ground alone.
- (iv) Respondent No.1 is defaulter in respect of the loan of DCHFC and she cannot be considered for grant of membership until she cleared the said loan. The society

has already challenged the said award dated 11.1.2014 before the Hon'ble Delhi Cooperative Tribunal.

(v) That in the copy of appeal supplied to the society there is no reference of any award dated 11.1.2014. In the order dated 19.02.2014 there is no reference as to when the copy of award dated 11.1.2014 was filed before the Respondent No.2 or when copy of the same was supplied to the Society. It is well settled law, if the Respondent No.1 had relied upon some new documents which were not filed earlier, the other party/society has to be given opportunity to comment on the same, but in the present no such opportunity was given to the petitioner society.

4. Ms. Pooja Anand had already filed a caveat before this Court, therefore, an opportunity was given to make her averments

5. I have perused the records and heard both the parties at length. One of the contentions of society is that the society rejected the application of Ms. Pooja Anand on 23.4.2013 and as per section 91 of DCS Act, the appeal should have been preferred within 30 days only. On this issue, Ms. Poja Anand in her reply stated that she had again filed an application under section 91 of the DCS Act, 2003 before the Society for grant of membership, which was received in the Society on 30.08.2013. Society dismissed this application vide letter dated 22.09.2013 conveyed to Ms. Pooja Anand, which read as under:

“With reference application for membership dated nil received on 30.08.2013, the society submits as under: -

You have also submitted the same application with the same set of documents and the society has rejected your application vide letter dated 23.04.2013 and you had duly received the rejection letter dated 23.04.2013 alongwith the documents submitted by you.

As you are a defaulter in respect of the loan of DCHFC, your application cannot be considered until you clear the said loan.

The society would not respond your application/letters in future unless you clear the loan of DCHFC.

We are returning your application, all the papers and the cheque of Rs. 610/-”.

She filed appeal before Assistant Registrar on 26.09.2013, i.e. within four days. In the light of the above, I hold that appeal before RCS was filed in time.

6. Further, perusal of the letter dated 23.4.2013 reveals that Ms. Pooja Anand's application dated 17.3.2013 was rejected on the ground that she was a defaulter of loan provided by the DCHFC. This letter reads as under :

“Your application was put before the Managing Committee in the meeting held on 16.2.2013. As you are default as far as payment of Loan Amount to DCHFC is concerned, the MC has rejected your application.”

7. During the course of hearing, Counsel for petitioner was unable to explain as to how an application dated 17.3.2013 could have been rejected in a meeting held on 16.2.2013. His argument that there appears to be some clerical mistake, is not supported by any documentary evidence that such an error was subsequently corrected by issuance of any amendment or corrigendum. On 05.02.2015, Society was directed to clarify within the period of one week as to what is the date on which meeting of the Managing Committee was held in which application of Ms. Pooja Anand was rejected. But Society failed to clarify the same. On 26.2.2015, Ld. Counsel for the Petitioner categorically admitted that no corrigendum or amendment was issued to rectify such mistake or error. Further the society’s ground that application was rejected on the ground that she was defaulter holds no water in the light of the finding of the award dated 11.1.2014.

8. In response to the society’s averment that the appeal filed by Ms. Pooja Anand has not been signed by herself, Ms. Pooja Anand in her written argument has submitted that she has filed an authority letter dated 31.10.2014 before the Assistant Registrar vide which her husband was duly authorized on her behalf. Further, this is an issue that should have been raised by the Petitioner before the Assistant Registrar.

9. The society submitted that the award dated 11.1.2014 has already been challenged by the society before the DCT but society failed to produce any order or stay granted by the DCT.

10. Considering all the facts and records, I do not find any grounds to admit the Petition. Hence, the petition is dismissed in limine.

11. File be consigned to record room after completion.

-sd-
(DHARAM PAL)
Financial Commissioner, Delhi
27.03.2015