

PRAKASH NARAIN SHARMA

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v.

BURMAH SHELL CO-OP. HOUSING SOCIETY LTD.

AUGUST 21, 2002

[R.C. LAHOTI AND BRIJESH KUMAR, JJ.]

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Delhi Cooperative Societies Act, 1972—Sections 60 and 93—Dispute between Cooperative Society and appellant—Appointment of arbitrator—Civil Court restraining arbitrator from proceeding ahead with arbitration proceedings—Non-appearance of cooperative society before the arbitrator on the appointed date of hearing—Arbitrator passing ex-parte award in favour of appellant—Award challenged—Single Judge setting aside ex-parte award in view of restraint order of Civil Court—Division Bench holding that Civil Court not competent to entertain any civil suit which any authority under the Act competent to adjudicate upon thus restraint order nullity—Also arbitrator could have ignored restraint order as not binding on him—On appeal held, in such cases person aggrieved should first approach Civil Court for adjudication upon the question of its own jurisdiction and then to vacate or recall its order if it is one which it did not have jurisdiction in law to make—Until this is done the order of competent court to be obeyed—Thus ex-parte proceedings before arbitrator to be set aside and parties heard bi-parte.

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Judgment/order—Binding nature of—Order of competent court—Remains binding, unless vacated or set aside—Cannot be ignored by assuming it to be void.

Dispute between appellant and respondent-society regarding allotment of plot was referred for adjudication to an Arbitrator. Respondent-society challenged the appointment of an Arbitrator. Civil Court restrained the Arbitrator from going ahead with the arbitration proceedings. On the next date of hearing respondent-society did not appear before the Arbitrator. Arbitrator proceeded ex-parte and passed an award in favour of appellant. Aggrieved, respondent-society filed an appeal against the award. Single Judge of High Court set aside the ex-parte award in view of the restraint order passed by Civil Court. On appeal, Division Bench held that Civil Court was not competent to entertain any civil suit which any authority under the Act was competent to adjudicate upon, and

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A therefore, the restraint order passed by Civil Court, was a nullity and an order by coram non-judice. Also the arbitrator, when apprised of the restraint order could have ignored the order as not binding on him. Hence the present appeal.

B Disposing of the appeal, the Court

HELD: Where exclusion of jurisdiction of the civil court is statutorily provided still on availability of requisite grounds the civil court can entertain a civil suit. Thus the holding of Division Bench of High Court that a civil court cannot under any circumstances entertain a civil suit in respect of proceedings pending before the Registrar, Cooperative Society cannot be concurred with. Also the view that Registrar of Cooperative Society could have ignored the order of Civil Court as not binding on him in view of Sections 93(3), 93(1)(c) and 60 of the Act cannot be accepted. It will be a dangerous proposition to be laid down as one of law that any individual or authority can ignore the order of the civil court by assuming authority upon itself to decide that the order of civil court is one by coram non-judice. The appropriate course in such case is for the person aggrieved first to approach the civil court inviting its attention to the relevant provisions of law and call it upon to adjudicate upon the question of its own jurisdiction and to vacate or recall its order if it be one which it did not have jurisdiction in law to make. So long as this is not done, the order of competent court must be obeyed and respected by all concerned. A judicial order, not invalid on its face, must be given effect entailing all consequences, till it is declared void in a duly constituted judicial proceedings. Thus the ex-parte proceedings before the arbitrator deserve to be set aside and the parties heard bi-parte. The then arbitrator having expired, a new arbitrator be appointed who shall resume the proceedings from the date with which the predecessor arbitrator had proceeded ex-parte against respondent No.1 subject to the order which may be passed by Civil Court. [647-B-G]

G *Dhulabhai v. State of Madhya Pradesh*, AIR (1969) SC 78, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5180 of 2002.

H From the Judgment and Order dated 27-4-2001 of the Delhi High Court in L.P.A. No. 466 of 2000.

G.L. Sanghi, K. Subba Rao and T.V. Ratnam for the Appellant.

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Rakesh Munjal and Sudhir Nandrajog for Respondent.

The Judgment of the Court was delivered by

R.C. LAHOTI J. Leave granted.

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The respondent No. 1 is a cooperative Society governed by Delhi Cooperative Societies Act, 1972 (hereinafter 'the Act' for short). There was a dispute between one S.N. Sharma and the respondent No. 1. The former claimed to be a member of the Society entitled to allotment of a plot by the Society and complained of having been illegally and unjustifiably deprived of the allotment. The Joint Registrar (Arbitration), vide his order dated 29-7-1988, directed the dispute to be referred for adjudication by one Shri S.C. Gupta S.N. Sharma expired on 28-12-1988 survived by legal representatives whose rights are claimed by the appellant to have come to vest in him.

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The appointment of arbitrator was challenged by the Society by filing a civil suit in the Court of Additional District Judge, Delhi who, by an interim order dated 4-10-1989, restrained the arbitrator from proceeding ahead with the arbitration proceeding. There is some controversy whether the restraint order was communicated or brought to the knowledge of the arbitrator or not; the fact remains that on the next date of hearing appointed after 4-10-1989 the Society failed to make appearance before the arbitrator. The arbitrator proceeded ex-parte and on 26-10-1989 made an award upholding the claim of the appellant. The Society preferred an appeal against the award while the appellant sought for its execution. The executing authority directed a plot of land of the Society to be attached. A civil writ petition came to be filed by the Society in the High Court of Delhi which was heard by a learned single judge, who vide order dated 18-8-2000, set aside the ex-parte award dated 26-10-1989 forming an opinion that in view of the restraint order passed by the civil Court the ex-parte proceedings and the ex-parte award were vitiated. The learned single Judge directed bi-parte hearing being restored and an award being made afresh.

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The appellant filled an intra-court appeal against the order of learned single Judge. The Division Bench held that in view of the provisions contained in Sections 60 and 93 of the Act, a civil Court was not competent to entertain any civil suit touching a matter which any authority under the Act was competent to adjudicate upon, and therefore, the restraint order passed by the

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A civil Court was a nullity and an order by coram non-judice. The arbitrator, even if communicated with, or apprised of, the contents of the restraint order of the civil Court, could have ignored it and proceeded ahead as the order of the civil Court lacking in jurisdiction was a nullity. In the opinion of the Division Bench the approach of the learned Single Judge could not be countenanced. However, still the Division Bench opined :-

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"It is also the stand of the first respondent that after the restraint order was passed by the civil Court, it stopped appearing before the arbitrator. The first respondent is quite justified in taking this stand. Any one in the position of the first respondent would have thought that the arbitrator will not proceed with the adjudication of the disputes after passing of the restraint order by the Additional District Judge. In this view of the matter the first respondent cannot be faulted for not appearing before the arbitrator after 4th October, 1989. It would be unfair and unjust to deprive the first respondent from highlighting and arguing its case before the arbitrator."

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The Division Bench noticed the factum of Shri S.C. Gupta, the then arbitrator having expired in between, and therefore directed the Registrar, Cooperative Society to appoint another arbitrator in place of late Shri S.C. Gupta to adjudicate upon the dispute between the parties. It was ordered accordingly and the writ appeal was disposed of.

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Feeling aggrieved by the order of the Division Bench, this appeal has been filed by special leave.

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Having heard the learned counsel for the parties, we are of the opinion that the appeal is liable to be dismissed. For the purpose of the present case we do not propose to enter into controversy whether the civil Court, on the averments made in the plaint, could have entertained a civil suit and could have passed the restraint order in the terms in which it did. It would suffice for our purpose to hold that the Society-respondent No. 1, having successfully obtained interim order from the civil Court restraining the arbitrator from proceeding ahead with the arbitration proceeding, could have reasonably acted on the belief that in view of the restraint order of the civil Court the arbitrator would stay his hands and shall not proceed ahead. It would have been better if the Society, through its representative counsel, would have made appearance before the arbitrator either to apprise the arbitrator with the order passed by the civil Court, at least to ascertain whether the order was communicated or brought to the knowledge of the arbitrator. In spite of such lapse on the part

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of the Society, it is not so much a question of legality of availability of jurisdiction with the civil Court in passing the restraint order as it is the question of finding out the availability of sufficient cause for non-appearance of the Society before the arbitrator on the appointed date of hearing. We do not agree with the reasoning of the Division Bench of the High Court that a civil Court cannot under any circumstances entertain a civil suit in respect of proceedings pending before the Registrar, Cooperative Society. Even where exclusion of jurisdiction of the civil Court is statutorily provided still on availability of requisite grounds the civil Court can entertain a civil suit on well defined parameters settled by Constitution Bench of this Court in *Dhulabhai v. State of Madhya Pradesh*, AIR (1969) SC 78. In any case we are not prepared to subscribe to the view of the Division Bench that the Registrar of Cooperative Society could have ignored the order of the civil Court as not binding on him in view of the provisions contained in Sections 93 (3), 93 (1) (c) and 60 of the Act. It will be a dangerous proposition to be laid down as one of law that any individual or authority can ignore the order of the civil Court by assuming authority upon itself to decide that the order of civil Court is one by coram non-judice. The appropriate course in such case is for the person aggrieved first to approach the civil Court inviting its attention to the relevant provisions of law and call it upon to adjudicate upon the question of its own jurisdiction and to vacate or recall its order if it be one which it did not have jurisdiction in law to make. So long as this is not done, the order of competent court must be obeyed and respected by all concerned. A judicial order, not invalid on its face, must be given effect entailing all consequences, till it is declared void in a duly constituted judicial proceedings.

Subject to the above we agree with the High Court that the ex-parte proceedings before the arbitrator deserve to be set aside and the parties heard bi-parte. In view of Shri S.C. Gupta, the then arbitrator having unfortunately expired, a fresh appointment in his place needs to be made. However, we clarify that the newly appointed arbitrator shall resume the proceedings from the date with which the predecessor arbitrator had proceeded ex-parte against the respondent No. 1 after 4-10-1989 subject to the order which may be passed by Civil Court on injunction application filed by the Society.

For the foregoing reasons but subject to clarification as above the operative part of the order made by the Division Bench of the High Court is maintained. The appeal be treated as disposed of accordingly.

N.J.

Appeal disposed of.