

+ **FAO(OS) No. 277/2007**Nehru Cooperative Group Housing Society
Ltd.Appellant

Through: Mr. P.S. Singh, Advocate

versus

Modern (India) Architects Respondent
Through: Mr. Mr. Y.P. Narula, Sr. Advocate with
Ms. Manmeet Arora and Mr. Gautam
Narula, Advocates**CORAM:**
HON'BLE MR. JUSTICE T.S.THAKUR
HON'BLE MS. JUSTICE VEENA BIRBAL% **O R D E R**
27.09.2007

This appeal under Section 37 of the Arbitration & Conciliation Act, 1996 arises out of an order passed by Single Bench of this Court whereby OMP No. 142/2003 filed by the appellant society against arbitral award made by Justice J.B. Goel, a Former Judge of this Court has been dismissed on the ground that the same has not been filed a person competent to do so.

Disputes between the parties arising out of an agreement relating to the construction of certain society buildings were referred to the sole arbitration of Justice J.B.

Goel, a Former Judge of this Court. The arbitrator made an award on 10.01.2003 holding the respondent entitled to a total sum of Rs.11 lacs representing the principal amount of Rs. 6,09,512/- towards his fees and interest upto the date of the award inclusive of cost and stamp duty etc. Interest @ 15% per annum on the principal amount of Rs.6,09,512/- was also awarded to the respondent. Aggrieved by the said award, the society filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 which came to be registered as OMP No. 142/2003. An objection to the maintainability of the said petition on the ground of competence of Shri Pradeep Mehta to file the same on behalf of the society appears to have been raised before the learned Single Judge which found favour with him culminating in the dismissal of the petition by an order of the learned Single Judge dated 28.03.2007. Aggrieved by the said order the present appeal has been filed by the appellant society through Shri H.S. Khan, special power of attorney holder of the Administrator of the society.

When this matter came up for hearing on 13.08.2007, the learned counsel for the parties and Shri S.M. Mazumdar, Administrator of the society who was also present in person

submitted that there were chances of an amicable settlement between the parties. Since, however, the liability under the award for the had to be liquidated by the members of the society, the Administrator desired that the matter could be adjourned to enable him to convene a General Body Meeting of the Members to discuss the issue and come up with a concrete proposal. The appeal was accordingly adjourned to 24.09.2007 to enable the Administrator to convene a meeting of the members and to make a concrete proposal for an amicable settlement to the respondent award holder. On 24.09.2007, the Administrator reported that a meeting of the General Body of the society had been held on 22.09.2007 in which the General Body has authorised him to negotiate a settlement with the respondent. He further stated that he was willing to discuss the matter and to negotiate such a settlement with the respondent for which purpose the appeal was adjourned to enable the parties to explore the possibilities of a settlement. Mr. Mazumdar, Administrator of the society today submits that pursuant to the efforts made by the parties to evolve an amicable settlement, a settlement has indeed been arrived at according to which the respondent has agreed to receive a sum of Rs.11,20,000/-

only in full and final settlement of all the claims in relation to agreement between the parties as also the award made by the Arbitrator inclusive of interest, costs, damages and expenses whatsoever. The parties have to that effect signed a document which has been filed before us today by Mr. Mazumdar and Shri Harsh Narang, one of the partners of the respondent. Statement of Shri Mazumdar, Administrator of the society and counsel for the respondent have been separately recorded in which they have subscribed to the correctness of the settlement as set out in the document presented before Court marked Exhibit `ST-1'.

In the light of the above developments and with the consent of learned counsel for the parties, we allow this appeal but only in part and to the extent that the award made by the learned Arbitrator and the order passed by the learned Single Judge shall stand modified to the extent that the respondent shall be entitled to recover from the appellant a total sum of Rs.11,20,000/- only in full and final discharge of all liabilities under the agreement between the parties, the award made by the Arbitrator and all claims on account of professional charges, interest, costs, damages etc. whatsoever. We further direct that the said amount of

Rs.11,20,000/- shall be paid by the appellant society to the respondent within a period of three months from today failing which the said amount shall start earning interest @ 9% per annum from the date the period of three months expires till actual realisation of the amount.

The appeal is with the above modification disposed of leaving the parties to bear their own costs.

A copy of this order be given dasti to both the parties.

T.S.THAKUR, J

VEENA BIRBAL, J

SEPTEMBER 27, 2007
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