

# Bhajanpura Cooperative Urban Thrift ... vs Registrar Cooperative Societies & Ors on 18 September, 2023

**Author: Manmeet Pritam Singh Arora**

**Bench: Manmeet Pritam Singh Arora**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CM(M) 937/2022  
BHAJANPURA COOPERATIVE URBAN THRIFT AND  
SOCIETY LTD.

REGISTRAR COOPERATIVE SOCIETIES & ORS.  
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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA  
ORDER

% 18.09.2023

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 19.05.2022 passed by the Financial Commissioner in Case No. 186/2014, titled as Bhajanpura Co-op. U/T & Credit Society Ltd. v. The Registrar of Co-op. Societies & Anr.

2. In the facts of this case, the Petitioner had assailed before the Financial Commissioner, i.e., Respondent No.3, the order dated 17.07.2014 passed by Assistant Registrar, Registrar Cooperative Societies, Government of NCT of Delhi, in a miscellaneous proceeding after the execution proceedings stood concluded.

2.1. However, the Financial Commissioner i.e., Respondent No. 3 dismissed the revision petition filed by the Petitioner under Section 116 of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/09/2023 at 22:24:33 the Delhi Cooperative Societies Act, 2003 ('Act of 2003') on the ground that the Petitioner herein has a remedy of filing an appeal under Section 112 of the Act of 2003 against the order dated 17.07.2014.

3. The learned counsel for the Petitioner has placed on record the judgment dated 28.03.2023 passed by the Division Bench of this Court in W.P.(C) 1588/2022 titled as Jain Co-operative Bank

Ltd. v. Puneet Jain & Ors. He states that issue raised in the present petition is no longer res integra in view of the pronouncement of law by the said judgment of the Division Bench. He relies upon paragraphs 7, 10, 11 and 12 which read as under:

"7. Section 105 of the Act deals with execution of orders etc. and provides that every decision, award or order duly passed by the Registrar or the Arbitrator or the Tribunal or the Government under Sections 31, 32, 33, 66, 71, 104, 110, 112, 114, 115 and 116 or any other provisions of this Act shall, if not carried out, be executed according to law for the time being in force relating to the recovery of land revenue where the decision, award or order provides for the recovery of money. In any other case the decision, award or order shall be executed by the Registrar or any person subordinate to him and empowered by the Registrar in this behalf, in the same manner as is provided in the case of a civil court by the Code of Civil Procedure, 1908.

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10. The cardinal rule of construction of statutes is to read the statutes literally, i.e. by giving to the words their ordinary, natural and grammatical meaning. A bare reading of Sections 112, 113 and 114 of the Act reflects that the remedy of Appeal has been provided to by the statute only in respect of Clauses (a) to (q) of sub-Section 1 of Section 112. The appeal against Clauses (d), (f), (g), (h), (i), (j) & (k) of sub-Section 1 of Section 112 lies to the Tribunal, whereas, if the decision or order falls under Clause (e) the appeal lies to the Government.

The Delhi Co-operative Tribunal under Section 114 of the Act is competent to call for and examine the record only of the proceedings in respect of which an appeal lies to it under Section 112 of the Act. In the absence of any appeal being provided with respect to orders passed in execution under Section 105 of the Act, it is difficult to countenance that the Appeal is maintainable before the Tribunal. Even a bare reading of Section 116 of the Act providing for Revision reflects that the Revision is maintainable in respect of any proceeding not being a proceeding in respect of which an appeal to the Tribunal is provided by Section 114 of the Act.

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11. In view of aforesaid legal position, it is obvious that the orders passed in "execution proceedings" purportedly under Section 105 of the Act are only amenable to the Revisional Jurisdiction and appeal cannot be preferred under Section 112 read with Section 114 of the Act, as the same has not been provided for in the statute. The same is also in accordance with the legislative policy, since the execution proceedings

are separate and independent proceedings for the execution of the award/decreed and the merit of the claim or dispute cannot be considered during the execution proceedings. Also, the challenge to the decision or award under Section 71 of the Act has already been provided for under Section 112(1)(k) and no further Appeal with reference to orders passed under Section 105 of the Act has been rightly envisaged, since the executing authority is bound by the terms of the decree.

12. It may also be observed that a party cannot be left remediless in respect of the orders passed in execution proceedings unless specifically barred by the statute. In view of above, the petitioner correctly approached the Financial Commissioner by way of Revision Petition for challenging the impugned order passed by the Assistant Collector."

(Emphasis supplied) 3.1. The reliance placed by the Petitioner on the said judgment was duly noted in the previous order dated 10.08.2023 as well and an opportunity was granted to Respondent No.2 to respond to the said submission.

4. The learned counsel for the Respondent No.2 states that the Petitioner impugned order dated 17.07.2014 before the Financial Commissioner, i.e., Respondent No.3. He states that an appeal would have been maintainable against the said order under Section 112(1) (i) and (k) of the Act of 2003.

5. In reply, the learned counsel for the Petitioner states that clauses (i) and (k) to Section 112 of the Act of 2003 are not attracted; as the order which was impugned before Respondent No.3 did not arise either under Section 70 or Section 71 of the Act of 2003. He states that order which was passed in favour of the Respondent No.2 by the Assistant Registrar was in a miscellaneous proceedings emanating after the conclusion of the execution. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 20/09/2023 at 22:24:34 proceedings. He states that the award in favour of the Petitioner had been satisfied and the execution disposed of. He states that therefore, no appeal could have been maintained by the Appellant against the order dated 17.07.2014.

6. This Court has considered the submissions of the parties .

7. In this petition, admittedly, there is no dispute that the Petitioner herein had approached the Financial Commissioner against the order dated 17.07.2014 passed by the Assistant Registrar, Registrar Cooperative Societies, Government of NCT of Delhi in the miscellaneous application no. RCS/Rec/2013/191 filed in pursuant to the execution proceedings. Though, disputes between Petitioner and Respondent No.2 were referred to arbitration, the same culminated in an award on 06.07.2006. The Petitioner initiated execution proceedings pursuant to the said award.

8. During the course of execution, the salary of Respondent No.2 was attached and it was the claim of Respondent No.2 that there has been excess recovery from him. In these circumstances, the Assistant Registrar passed the order dated 17.07.2014 directing the Petitioner to refund the excess recovery to the extent of Rs. 1,73,945/- to the Respondent No. 2. The said order was not passed by the Assistant Registrar under Section 70 or 71 of the Act of 2003 and therefore, in the opinion of this Court, the said order of the Assistant Registrar is not appealable either under Section 112 (1) (i) and

(k) of the Act of 2003. The said order having been passed in proceedings emanating from the execution of the award dated 06.07.2006 would be amenable to revisional jurisdiction of Respondent No.3.

9. Accordingly, in view of the judgment of the Division Bench in W.P.(C) 1588/2022 titled as Jain Co-operative Bank Ltd. v. Puneet Jain & This is a digitally signed order.

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10. The Financial Commissioner is requested to take up this matter on 12.10.2023 at 11:30 AM. The date has been fixed as per the convenience of Petitioner and Respondent No.2.

11. The counsel for the Respondent No.1 is directed to ensure that this order is duly communicated to Respondent No.3.

12. With the aforesaid directions the present petition stands allowed. The pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J SEPTEMBER 18, 2023/hp Click here to check corrigendum, if any This is a digitally signed order.

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