

Yogeshwar Dayal Surety Of Mr. Prashant ... vs The Vishnu Urban Cooperative Thrift ... on 8 April, 2025

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision

+ W.P.(C) 4466/2025, CM APPL. 20624/2025 & CM APPL. 20625/2025

YOGESHWAR DAYAL SURETY OF MR. PRASHANT KUMAR

.....Petitioner

Through: Mr. Mukesh Gupta, Mr. Mayank Ahuja, Ms. Varsha Singh, Advs.

versus

THE VISHNU URBAN COOPERATIVE THRIFT CREDIT SOCIETY LTD & ANR.

.....Respondent

Through: None.

AND

+ W.P.(C) 4467/2025, CM APPL. 20626/2025 & CM APPL. 20627/2025

YOGESHWAR DAYAL

Through: Mr. Mukesh Gupta, Mr. Ahuja, Ms. Varsha Sin

versus

THE VISHNU URBAN COOPERATIVE THRIFT AND CREDIT SOCIETY LTD AND ORS

.....Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 4466/2025, CM APPL. 20624/2025 & W.P.(C) 4467/2025, CM APPL. 20626/2025, 20627/2025

3. The present petitions have been filed by the Petitioner under Article 226 and 227 of the Constitution of India inter alia seeking setting aside the order dated 27th January, 2025 (hereinafter 'impugned order') passed by the Chairman, Delhi Cooperative Tribunal (hereinafter 'DCT'). Vide the impugned order, the DCT has dismissed the Petitioner's applications to summon the TCR of some other arbitration cases. The said order reads as under:

"Quorum is not complete.

Reply already stands med on behalf of. the society. Sh. Aggarwal submits that application for condonation of delay has not yet been disposed off. He seeks disposal thereof.

As regards the service on the principal borrower, Sh. Ahuja submits that he will file affidavit of service by way of affixation.

Application moved by the Appellant to summon the TCR of arbitration case other than the present arbitration is dismissed as there is no provision for the Appellate Court to call for the evidence specially when the same is not relevant.

Quorum is not complete.

Adjourned for arguments to 14.05.2025."

4. The brief background is that the Petitioner had stood surety for a loan taken by the Principal Borrowers namely, Mr. Prashant Kumar (Respondent No.3 in W.P.(C) 4467/2025) and Mrs. Meena Malhotra (Respondent No.3 in W.P.(C) 4466/2025) who are husband and wife (hereinafter collectively 'Principal Borrowers'). The Principal Borrowers had borrowed two loans to the tune of 4.5 lakhs each from the Respondent No.1-Vishnu Urban Cooperative Thrift Credit Society Ltd (hereinafter 'Society').

5. The Principal Borrowers had not repaid the amount which led to two awards being passed by the ld. Arbitrator against the Principal Borrowers and the sureties. The said awards were passed on 30th June, 2022 and 22nd October, 2022 respectively.

6. It is the case of the Petitioner that he, though impleaded, was not informed about the arbitration proceedings. It is only when the salary account of the Petitioner, who is working as a teacher, was sought to be attached some time in September, 2024 that the Petitioner came to know of the award.

7. The Petitioner, then, is stated to have obtained a copy of the ex parte award and challenged the award before the DCT. The said appeal was registered as Appeal Nos.126/2024 and 127/2024. The Petitioner sought to file an application for summoning of records to demonstrate to the DCT that the Principal Borrowers were defaulters who had defaulted in paying other loans even prior to being granted the present loan. However, DCT had dismissed the said application vide the impugned order. Thus, this petition is filed.

8. The submission of Id. Counsel for the Petitioner is that the matter is now listed on 14th May, 2025 for arguments. It is the grievance of the Petitioner that the DCT is not taking up the appeal or the stay application for hearing. In fact, the last order records that the quorum is not complete. Under such circumstances, the setting aside of the impugned order is sought.

9. In the opinion of this Court, the entire matter is now pending before the DCT. The Petitioner has already availed of his appellate remedies under Section 112 of the Delhi Cooperative Societies Act. The DCT is expected to take up the appeal and also consider any interim order which may be sought by the Petitioner on an early date so that the threat of attachment of the salary account of the Petitioner can be assuaged.

10. The appeal is listed on 14th May, 2025. The Petitioner is stated to have moved a stay application before the DCT. Let the same shall be taken up on the next date of hearing and appropriate orders be passed within a period of 30 days in the said stay application.

11. All rights and remedies of the Petitioner are left open.

12. Parties to appear before the DCT on 14th May, 2025.

13. The Petitioner is permitted to obtain copies of the records of any other cases which are relevant to the stay application and place the same before the DCT in support of the stay application.

14. Petitions are disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH JUDGE RAJNEESH KUMAR GUPTA JUDGE APRIL 8, 2025 Rahul/Ar.