
(2004) 01 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1185 of 1983

Karnail Singh

APPELLANT

Vs

Chandigarh Administration and Others

RESPONDENT

Date of Decision : 13-01-2004

Acts Referred:

Punjab State Aid to Industries Act, 1935 — Section 35

Citation : (2004) 137 PLR 231 : (2004) 2 RCR(Civil) 579

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Guarav Chopra, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The petitioner has challenged the recovery of the loan amount granted to respondent No. 3 under the Punjab State Aid to Industries Act, 1935 (for short The Act).

2. Vide agreement dated 9.3.1977, a sum of Rs. 5,000/- was advanced as loan to Smt. Satya Sharma, respondent No. 3 for the purpose of development of Foundary Unit. The petitioner has agreed in accordance with Rule 7 of the Rules framed u/s 46 of the Act to stand as surety for the repayment of the said loan.

3. Since there was default by respondent No. 3 to make the payment of the loan amount, the State Government in exercise of the powers conferred u/s 35 of the Act granted sanction to recover the entire amount of loan of Rs. 5,000/- together with penal interest accrued thereon from Satya Sharma as well as surety as arrears of land revenue. After the State Government has ordered to recover the amount as arrears of land revenue a notice was issued by the Assistant Collector II Grade, Union Territory, Chandigarh upon respondent No. 3 but the loan amount was not paid. On 13.1.1982, a notice was served upon the petitioner as well as upon respondent No. 3 for repayment of the loan but still the amount was not paid. Thereafter, Assistant Collector II Grade initiated the proceedings for

attachment of the properties of the petitioner.

4. The petitioner has filed the present writ petition alleging therein that the Assistant Collector is proceeding with the recovery proceedings of amount of Rs. 7639.92 paise without any sufficient reasons and without giving any notice. Reliance was placed upon Section 23 of the Act to contend that no declaration in terms of the aforesaid provisions have been issued which may entitle the respondents to recover the loan amount as arrears of land revenue.

5. Mr. Gaurav Chopra, learned counsel for the petitioner has vehemently argued that no recovery against the petitioner who is a surety can be initiated without exhausting the remedies of recovery in terms of Sections 67 and 68 of the Punjab Land Revenue Act, 1887 against the principle borrower. It is only when such process is not able to satisfy the recovery of the total amount the recovery proceedings could be initiated against the petitioner for the recovery of the balance, if any, and that too after complying with the procedure prescribed under law.

6. The petitioner has placed reliance upon a Division Bench of this Court reported as Bhagwan Dass v. The Estate Officer, Chandigarh and Anr. 1968 P.L.J. 260 to contend that all processes under Sections 68 to 76 of the Act must first be exhausted.

7. After going through the pleadings and after considering the arguments addressed by the learned counsel for the petitioner. I am of the opinion that the writ petition has no merit and is liable to be dismissed.

8. u/s 35 of the Act, the State Government is competent to order recovery of the amount due as arrears of land revenue notwithstanding anything contained in Sections 23, 24 and 25 of the Act. Section 35 of the Act reads as under;

35. Notwithstanding anything contained in Sections 23, 24 and 25 any amount payable to the State Government under this Act or by virtue of any contract entered into under this Act including interest and costs. If any, may with the previous sanction of the State Government, be recoverable as arrears of land revenue."

9. In exercise of the powers conferred u/s 35 of the Act, the State Government has passed an order on 5.9.1979, Annexure R5 wherein the loan amount has been ordered to be recovered as arrears of land revenue. Thereafter, the petitioner has been served notice as mentioned in para No. 3 of the written statement. The petitioner has not filed any rejoinder to controvert the averments made in the written statement. It is, thus, apparent that a notice was issued calling upon the petitioner to pay the amount which has been ordered to be recovered as land revenue.

10. Reliance of the petitioner on Bhagwan Dass's case (EBupra) is not tenable. The basic fallacy in the argument raised by the learned counsel for the petitioner is that the liability of the guarantor is co-extensive with that of the principle

borrower. The judgment reported is not a case of recovery of dues against a guarantor without first initiating proceedings against the principle debtor. In *State Bank of India Vs. Messrs. Indexport Registered and others*, been held that the liability of the guarantor is co-extensive with that of the principal borrower. In fact that is the concept of guarantee. It has been so held as under:

"Where the money decree was against all the defendants including the guarantor and a mortgage decree against one of the defendants who had mortgaged the shop with the plaintiff bank, so far as the said shop was concerned and the decree did not put any fetter on the right of the decree holder to execute it against any party whether as a money decree or as a mortgage decree, the decree holder would be entitled to proceed against the guarantor first for the execution of the decree. Moreover, it is the right of the decree holder to proceed with it in a way he likes. Section 128 of the Indian Contract Act itself provides that the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract." If on principal a guarantor could be, sued without even suing the principle debtor there is no reason, even if the decretal amount is covered by the mortgaged decree, to force the decree-holder to proceed against the mortgaged property first and then to proceed against the guarantor."

11. In view of the above, the argument raised by the learned counsel for the petitioner that no recovery could be made against the petitioner without recovering the amount against the principal debtor is not tenable in law. The procedure prescribed in Section 23 of the Act is not required to be followed in view of the order passed by the State Government appended with the written statement as Annexure R5. Consequently, I do not find any merit in the present writ petition which is hereby dismissed. No order as to costs.