
(2018) 05 DEL CK 0398
In the Delhi High Court
Case No : RFA No.455 OF 2018

M/S WATER MANAGEMENT INDIA PVT. LTD. & ANR.	APPELLANT
Vs	
SUMAN LATA SAXENA	RESPONDENT

Date of Decision : 28-05-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 96
Indian Contract Act, 1872 — Section 140

Citation : (2018) 05 DEL CK 0398

Hon'ble Judges : VALMIKI J.MEHTA

Bench : Single Bench

Advocate : Rakesh Kumar, Hetish Raj

Final Decision : Dismissed

Judgement

VALMIKI J. MEHTA, J (ORAL) C.M. No.22606/2018 (exemption)

1. Exemption allowed subject to just exceptions. C.M. stands disposed of. C.M. Nos.22604/2018 (for condonation of delay in filing) & 22607/2018 (for condonation of delay in re-filing)

2. For the reasons stated in the application, delay of two days in filing and 55 days in re-filing the appeal is condoned. C.M.s stand disposed of. RFA No.455/2018 and C.M. No.22605/2018 (stay)

3. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by two defendants in the suit impugning the judgment of the Trial Court dated 22.11.2017 by which trial court has decreed the suit filed by the respondent/plaintiff and dismissed the counter-claim filed by the appellants/defendants. The suit of the respondent/plaintiff has been decreed for a sum of Rs.18.10 lacs along with interest at a very

reasonable rate of 5% per annum simple.

4. I need not refer to the contents of the plaint, written statement and evidence led by the parties in detail inasmuch as it is undisputed before this

Court that the respondent/plaintiff stood as a guarantor for the appellant no.1/defendant no.1 company, and since the dues were not paid by the

appellant no.1/defendant no.1 company to the Indian Overseas Bank from which the appellant no.1/defendant no.1 had taken the loan and the

respondent/plaintiff had stood as a guarantor, therefore the respondent/plaintiff had to pay the amount to the Indian Overseas Bank and thus on

account of subrogation, the respondent/plaintiff claimed the suit amount from the appellants/defendants being the amount paid by the

respondent/plaintiff to Indian Overseas Bank.

5. I may note that as per Section 140 of the Indian Contract Act, 1872 on the guarantor paying to the creditor the amount payable by the principal

borrower, the guarantor is entitled to recover the amount from the principal borrower.

6. The only issue which is argued on behalf of the

appellants/defendants is that at best in view of Section 140 of the Indian Contract Act it would only be the appellant no.1/defendant no.1 company

which would be liable inasmuch as the liability which is discharged by the respondent/plaintiff is of the appellant no.1/defendant no.1 and the appellant

no.2/defendant no.2 who is only a Director of the appellant no.1/defendant no.1 company cannot be made liable.

7. I cannot agree with the argument urged on behalf of the appellants/defendants inasmuch as the respondent/plaintiff has categorically stated in para

25 of the plaint, and on which aspect the respondent/plaintiff has also filed his affidavit by way of evidence in the identical manner, that the appellant

no.2/defendant no.2 who is the Managing Director of the appellant no.1/defendant no.1 company had assured that the respondent/plaintiff on making

payment to the bank will also be repaid personally by the appellant no.2/defendant no.2. Obviously now the appellants/defendants are trying to be

clever by half by seeking to draw distinction between the appellant no.1/defendant no.1 company and the Director, but in the present case is it not that

law of Section 140 of the Indian Contract Act which applies, as no doubt there is a difference between a company and a Director but once the

Director personally agrees to make the payment for and on behalf of the company, in such a situation the Director on account of the personal contract of being liable to pay the guarantor of the debtor company, such person would also be personally liable to pay the amount paid by the respondent/plaintiff/guarantor to the creditor/bank.

8. There is no merit in the appeal. Dismissed.