
(2008) 04 P&H CK 0111
In the Punjab And Haryana At Chandigarh

Punjab and Sind Bank

APPELLANT

Vs

Debts Recovery Appellate Tribunal

RESPONDENT

Date of Decision : 07-04-2008

Acts Referred:

Citation : (2008) 3 PLR 159

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—Petitioner, which is a nationalized bank, has approached this Court for the issuance of a writ of certiorari quashing order dated 9.1.2007 (Annexure P-17) passed by respondent No. 1 i.e. Debts Recovery Appellate Tribunal, Delhi (hereinafter referred to as "DRAT, Delhi") in Misc. Appeal No. 134/2006 (in OA 343/2004), vide which application of respondent No. 2 was allowed and his name has been ordered to be deleted as a defendant/guarantor in the original application No. 343/2004, pending in the Debt Recovery Tribunal, Chandigarh (hereinafter referred to as DRT, Chandigarh).

2. Respondent No. 3 i.e. M/s Bawa Shoes Leather Guild (P) Limited, 435, Guru Teg Bahadur Nagar, Jalandhar, through its M.D., which is a registered company with the Registrar of Companies, had approached the petitioner bank for loan facilities which were secured by way of mortgage of the properties as well as personal guarantee executed by respondent Nos. 2, 4, 5 and 6. However, respondent No. 3 failed to maintain financial discipline pertaining to the loan facilities, availed by it from the petitioner bank and as such its accounts was classified as "Non-Performing Asset" (NPA). Thereafter petitioner bank filed an application for recovery of Rs. 7,22,65,971/- before DRT, Chandigarh. Respondent No. 2 filed written statement before DRT, Chandigarh and claimed his discharge on the plea that he has resigned from the Board of Director and his guarantee was substituted by the Bank by taking the guarantee of Mr. Sharanpal Singh Janeja. Replication was filed by the petitioner bank, wherein it was pleaded

that no guarantee was substituted after the retirement of respondent No. 2 as a Director of the Company. Respondent No. 2 also filed an application for striking out his name as defendant from the array of the parties in the original application before DRT, Chandigarh and the said application was disposed of on 20.03.2006 with the observations that the issues of novation of contract i.e. striking off the name of respondent No. 2 will be dealt with finally after producing the evidence by both the parties.

3. The case was taken up for hearing on 30.05.2006 by DRT, Chandigarh and an order was passed wherein it was found that the bank has not reverted back to the factual issues in compliance with order dated 20.03.2006 and a specific affidavit on oath be made in this regard whether Shri Sharanpal Singh Janeja executed any guarantee deed on 13.05.2003 after the resignation of respondent No. 2. The case was ordered to be listed before the Registrar of the Tribunal on 15.09.2006 for exhibition of documents of both the parties. Respondent No. 2 raised objections regarding additional documents being filed by the bank and the same was upheld by the Tribunal. Respondent No. 2 also filed a Miscellaneous Appeal No. 134/2006 against order dated 30.05.2006 before DRAT, New Delhi on the ground that the case has been fixed for evidence and exhibition of documents on 15.09.2006 and respondent No. 2 is being made to face the trial of the case and sought deletion of his name from the proceedings in the original application, pending before DRT, Chandigarh, which was allowed, vide impugned order dated 9.1.2007 (AnnexureP-17).

4. Feeling aggrieved against the impugned order (Annexure P-17), the petitioner bank has filed the present writ petition.

5. Shri I.P. Singh, Advocate for the petitioner has argued that respondent No. 2 was a guarantor of respondent No. 3 and the original application filed by the petitioner bank for a recovery of Rs. 7,22,65,971/- is still pending before DRT, Chandigarh and since respondent No. 2 was one of the guarantors, who had given his personal guarantee pertaining to the loan facilities of respondent No. 3 and the guarantee deed was renewed from time to time by the guarantors, which he did not renew after 30.8.2000 whereas the other guarantors got renewed the guarantee deed on 13.05.2003 for an amount of Rs. 6,70,51,800.85 Ps., which was outstanding at that time. It was further argued by learned Counsel for the petitioner that the guarantee deed executed by respondent No. 2 was a continuing one and even if he had resigned as a Director of respondent No. 3 i.e. Company on 21.5.2002 yet he cannot be discharged in the recovery case. Respondent No. 2 was neither discharged as a guarantor by the bank nor Shri Harjaspal Janeja executed any guarantee deed substituting him.

6. On the other hand, Shri C.S. Pasricha, Advocate for respondent No. 2 has vehemently opposed the arguments raised by learned Counsel for the petitioner. Mr. C.S. Pasricha, Advocate pointed out that admittedly on 13.05.2003, the outstanding amount of the petitioner bank was Rs. 6,70,51,800.85 Ps. for which guarantee deed (Annexure P-16) was executed by respondent Nos. 4 and 5 and

thus, the amount of the bank was fully secured. He has further argued that there is no dispute that respondent No. 2 had already resigned from the post of the Director of the Company on 21.05.2002 and that he never got renewed the guarantee deed after 30.08.2000 and therefore, his name has rightly been struck off from the array of the parties, vide impugned order.

7. We have heard learned Counsel for the parties and perused the record.

8. There is no dispute with regard to the fact that respondent No. 2 had resigned from Directorship of the Company and he did not renew his guarantee deed after 30.08.2000. Undisputedly, respondent Nos. 4 and 5 executed guarantee deed on 13.05.2003 (Annexure P-16) for the outstanding amount of Rs. 6,70,51,800.85 Ps on that day. Even otherwise it has come on record that the petitioner bank released packing credit against forged and fabricated orders and the bank deliberately and with malafide intentions, did not verify the authenticity of the orders and released money. It was also pointed out that the said money was transferred to the account of Bawa Shoes Limited, maintained in the same bank and later on the money was withdrawn by respondent Nos. 4 and 5, who had substantial interest in the said company, namely, BSL. The DRAT, Delhi while passing the impugned order, has found that the petitioner bank has not placed on record the additional guarantee given by Mr. Sharanpal Janeja as pleaded and therefore, an adverse inference has to be drawn against the petitioner bank. The DRAT, Delhi also found that the bank has not disclosed the true facts for taking an appropriate view in the light of specific allegations made by the petitioner bank that on 13.05.2003 fresh guarantee had been obtained by the petitioner-bank replacing the guarantee of the applicant/appellant. The petitioner bank has replied to these pleadings of respondent No. 2 as under:

Even if it be conceded that respondent No. 5 resigned from the directorship, according to settled law the liability of a Director-Guarantor does not cease on execution of fresh guarantee by another guarantor.

9. It was further averred by the petitioner bank that although documents were executed on 13.05.2003, yet 5th defendant, appellant herein, was not absolved of his liability. In addition to that, additional guarantee of the appellant was taken by the bank.

10. From the above pleadings of the parties, it is crystal clear that the bank has admitted that respondent No. 2 had resigned from the Board of Director of respondent No. 3-Company and another Director has executed a fresh guarantee substituting him. Thus, it does not lie in the mouth of the petitioner bank to say that respondent No. 2 is not absolved of his liability even from the documents placed on record. The stand of the petitioner bank to the effect that the guarantee deed executed by respondent Nos. 4 and 5 on 13.5.2003 was additional guarantee, is falsified from fresh guarantee deed i.e. Annexure P-16, executed by respondent Nos. 4 and 5, which shows that they had executed this guarantee deed for a sum of Rs. 6,70,51,800.85 Ps., the exact amount, which

was outstanding on that day.

11. We also find that the loan amount of the petitioner bank has been secured by respondent company by executing mortgage deeds of sufficient valuable properties. In addition personal guarantee have also been executed by respondent Nos. 4 and 5.

Keeping in view the totality of the circumstances we find no error of jurisdiction in the impugned order passed by quasi judicial authority. In view of this, we are not inclined to interfere in the impugned order passed by respondent No. 1. Hence this writ petition is dismissed.