
(2017) 02 P&H CK 0271
In the Punjab And Haryana At Chandigarh
Case No : 19705 of 2014

Sukhdev Singh and another

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 01-02-2017

Acts Referred:

Contract Act, 1872, Section 131 -
Revocation of continuing guarantee by surety's death
Punjab Co-operative Societies Act, 1961, Section 69, Section 66<

Citation : (2017) 02 P&H CK 0271

Hon'ble Judges : Amit Rawal

Bench : SINGLE BENCH

Advocate : P.S.Dhaliwal, Yatinder Sharma, Harbans Lal Sharma

Judgement

1. The petitioners are the legal representatives/ successors-in-interest of Kartar Singh who unfortunately died on 23.4.2008.

2. Mr.P.S.Dhaliwal, learned counsel appearing for the petitioners submits that the father of the petitioners had executed a surety bond, Annexure P.1 in favour of respondent-society, where the property described therein was given as surety in respect of the service career of Manjit Singh. He submits that Manjit Singh was, none else but as a Secretary who caused certain embezzlement resulting into the reference of the dispute under Section 55 of the Punjab Cooperative Societies Act, 1961 (for short, "the Act") and the arbitration award dated 27.5.2010, Annexure P.2, came to be passed. The respondent-Society while exercising the powers under Section 63 of the Act initiated proceedings of execution by attaching the property given in the surety bond. The award was not executable as in place of Kartar Singh, one Lal Singh had given a surety on 16.2.2004. The then President of the respondent-Society discharged/ cancelled the surety Kartar Singh, in essence, it has been observed that Manjit Singh had embezzled the amount of Rs.16,99,617.19/- but owing to the death of surety, the amount could not be recovered. The order dated 1.8.2014, Annexure P.4, passed by

respondent No.2 does not confirm the requirement of law. He has also placed reliance upon the provisions of sub section 4 of Section 6 of the Hindu Succession Act, 2005 (for short "the Act 2005") to contend that after the amendment of the Hindu Succession Act, the liability of a son, grandson or great-grandson to pay the debt arising out of his father, grandfather or greatgrandfather stood discharged on his death. In fact, the surety is personal grant as per the provisions of Section 131 of the Indian Contract Act, 1872 (for short, "the Act 1872) whereby on account of death of surety, in the absence of any contract to the contrary, guarantee does not continue. He submits that the surety does not bind his legal heirs, inasmuch as, it was the personal act of Kartar Singh (deceased). The act of the respondent-society seeking attachment of the property is nothing but to recover the alleged amount. In addition to the aforesaid grounds, vide order dated 20.2.2013, Annexure P.3, respondent No.3 discharged the liability of the petitioner but the order was assailed by the respondent-Society, which was set aside vide order dated 1.8.2014, Annexure P.4. In these circumstances, the petitioner has approached this Court.

3. Per contra, Mr.Harbans Lal Sharma, learned counsel appearing for respondent No.5 submits that the writ petition is liable to be dismissed as an effective and alternative remedy of revision under Section 69 of the Act is available against the order dated 1.8.2014, Annexure P.4 as the respondent-Society had filed an appeal against the order dated 20.2.2013, Annexure P.3, before the Joint Registrar who accepted the same. In support of his contention, reliance upon the judgment rendered by a Division Bench of this Court in Naurata v. State of Punjab 2000(2) RCR (Civil) 635 has been laid.

4. I have heard learned counsel for the parties and am of the view that there is force in the submissions of learned counsel for the petitioners.

5. For the sake of brevity, Sections 63 to 66 of the Act are reproduced as under: "63. Execution of certain decision, awards and orders.-Every decision, award or order duly passed under Section 54, 56, 62 or 69 shall, if not carried out-

(a) on a certificate signed by the Registrar or any person authorised by him in this behalf, be deemed to be a decree of a civil court, and shall be executed in this same manner a decree of such Court; or

(b) be executed by the Registrar or any other person subordinate to him, empowered by the Registrar in this behalf, by the attachment and sale or by sale without attachment of any property to the person or of the co-operative society against whom the order, decision or award has been obtained or passed; or

(c) be executed according to the law for the time being in force for the recovery of arrears of land revenue :

Provided that an application for the recovery of any sum in the last aforesaid manner shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or any person authorized by him in this behalf.

64. Execution of orders of liquidator. -The orders of the liquidator under Section 59 shall be executed according to the Act and under the rules for the time being in force for the recovery of arrears of land revenue.

65. Attachment before award. - Where the Registrar is satisfied that a party to any reference made to him under Section 55 intent to defeat or delay the execution of any decision that may be passed thereon is about to-

(a) dispose of the whole or any part of the property; or

(b) remove the whole or any part of the property from the local limits of the jurisdiction of the Registrar, the registrar may, unless adequate security is furnished, direct the conditional attachment of the said property or such part thereof as he thinks necessary. Such attachment shall be executed by a Civil court having jurisdiction in the same way as an attachment order passed by itself and shall have the same effect as such an order :

Provided that the powers of the Registrar under this Section shall not be delegated to any officer below such rank as may be prescribed.

66. Registrar or person empowered by him to be civil Court for certain Purposes. - The Registrar or any person empowered by him in this behalf shall be deemed, when exercising any powers under this Act for the recovery of any amount by the attachment and sale or by the sale without attachment of any property, or when passing any orders on any application made to him for such recovery for taking a step-in-aid of such recovery, to be civil Court for the purposes of Article 182 of the first schedule to the Indian Limited Act, 1908 (9 of 1908)."

6. The award passed under the Act is executable as a decree of Civil Court. The Registrar has also the powers under the Act for recovery of amount by attaching any property. However, the order dated 27.5.2010, Annexure P.2, suffers from illegality. For the sake of brevity, the operative part of the aforementioned order is reproduced as under: "..But this surety was not entered in the revenue record. Now this land be attached because the Manjit Singh Secretary has embezzled the amount of Rs.16,99,617.19 but due to the death of this employee, the embezzled amount could not be recovered from him. So it become necessary for recovering the embezzled amount, the surety given by Kirpal Singh son of Uttam, land description of which is as under..."

7. No steps have been taken to ascertain the properties (i.e. movable or immovable) of the deceased Manjit Singh, Secretary. In my opinion, the order is most sketchy and illegal as the order was passed to attach the property of the surety Kartar Singh (deceased). Under the provisions of sub Section 4 of Section 6 of the Act 2005, the liability of a son, grandson or great-grandson to pay the debt arising out of his father, grandfather or great-grandfather on his death stands discharged. The amendment in the aforementioned Act came into being with effect from 9th September, 2005. The contents of the surety bond reveal from order, Annexure P.3, that it was his personal surety, thus, as per the the

provisions of Section 131 of the Act, 1872 in case the surety dies, in the absence of any contract to the contrary, surety/guarantee does not continue, thus, I am of the view that the respondent-Society ought to have made an effort to ascertain the movable or immovable property of Manjit Singh and should have recovered the amount, much less as propounded by the surety Lal Singh, in essence, the President who received the second surety (Lal Singh) by cancelling the surety of Kartar Singh, no fault can be attributed to the petitioners and Kartar Singh (since deceased). It was incumbent upon the President to place the aforementioned document(s) before the Managing Committee to seek of replacement of surety for approval. The Society should not have in a careless manner proceeded against the property belonging to Kartar Singh devolved upon the petitioners, as he died intestate.

8. Even if there is a remedy of revision under Section 69 of the Act, the writ jurisdiction can always be invoked once order is found to be without jurisdiction. The writ petition is pending since 2014. It was too late in a day to relegate the petitioners to avail of the remedy as indicated/submitted under the provisions of Section 69 of the Act.

9. Accordingly, the writ petition is allowed and the impugned orders dated 27.5.2010 and 1.8.2014, Annexures P.2 and P.4, are hereby set aside.