

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23rd February, 2011

+ W.P.(C) No.3283/2010 & CM No.6591/2010 (for stay)

% SH. CHHATTAR PAL SINGH & ANR. Petitioners
Through: Mr. Manish Kumar, Advocate.

Versus

DELHI FINANCIAL CORPORATION & ORS Respondents
Through: Mr. Rajesh Mahajan, Advocate for
R-1.
Mr. Anand Nandan, Advocate for
R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The two petitioners working as Conductor & Driver respectively with the respondent no.2 Delhi Transport Corporation (DTC) have filed this petition for quashing of the orders dated 20th March, 2006 and 25th

June, 2009 of the respondent no.1 Delhi Financial Corporation (DFC) and for restraining the respondent no.2 DTC from in pursuance to the said orders attaching the salary of the petitioners.

2. Notice of the petition was issued. No interim relief was granted.

3. The counsel for the respondent no.1 DFC has today in Court handed over a copy of the counter affidavit with annexures. The counsel for the petitioners has stated that no rejoinder is required. The counsels have been heard.

4. The petition was filed pleading that the petitioners had in good faith and on the request of their friend Shri Bijender Singh whose wife is impleaded as respondent no.3, agreed to become guarantors for the loan of ₹ 4,50,000/- taken by the respondent no.3 from the respondent no.1 DFC. It is further pleaded that the respondent no.3 had mortgaged her property with the respondent no.1 DFC by way of security for the said loan and even otherwise has sufficient means to repay the said loan; that the respondent no.1 DFC has however directed the respondent no.2 DTC to

attach the salary of the petitioners. The petitioners contend that recovery of the loan amount from them as guarantors is not permissible without the respondent no.1 DFC first attempting to recover the same from the principal borrower i.e. respondent no.3 and/or without sale of the mortgaged property. It is further pleaded that the respondents had attached the salary of the petitioners under Section 29 of the State Financial Corporations Act, 1951 and which provision cannot be invoked against the guarantors. Reliance in this regard is placed on ***Karnataka State Financial Corporation v. N. Narasimahaiah*** (2008) 5 SCC 176. It is yet further pleaded that Shri Bijender Singh is also employed with the respondent no.2 DTC but action of recovery of the loan amount from the petitioners only has been taken. The petitioners have along with the petition annexed the letters dated 20th March, 2006 and 25th June, 2009 of the respondent no.1 DFC to the respondent no.3 under Section 29 of the Act with copies *inter alia* to the petitioners.

5. The respondent no.1 DFC in its counter affidavit has *inter alia* pleaded that the respondent no.3 had availed the loan for purchase of a

Rural Transport Vehicle (RTV) and the petitioners herein had stood surety/guarantors and executed Bond of Guarantee in favour of the respondent no.1 DFC; that the said loan was also secured by hypothecation of the financed vehicle and an FDR amounting to ₹ 25,000/-; that the principal borrower failed to repay the installments and defaulted; that the financed vehicle was accordingly seized but the principal borrower did not take any steps for release of the same; that the vehicle over a period of time deteriorated and was sold as scrap. In the circumstances the respondent no.1 DFC had taken action under Section 32G of the Act and applied to the Competent Authority for issuance of a Recovery Certificate in the sum of ₹ 7,24,659/- exclusive of interest; that Competent Authority issued notices to the petitioners also but the petitioners failed to appear and accordingly Recovery Certificate was issued against the petitioners also and in pursuance whereof the salary of the petitioners was attached. It is denied that the salary of the petitioners has been attached under Section 29 of the Act. The respondents along with the counter affidavit have filed documents showing such attachment of salary of the petitioners in exercise of powers under Section 32G of the Act.

6. Faced with the aforesaid, the counsel for the petitioners has argued that even Section 32G of the Act cannot be invoked against the surety/guarantor on the same parity of reasoning as in ***Karnataka State Financial Corporation*** (supra).

7. I am unable to agree. While Section 29 of the Act empowers the State Financial Corporation to take over the management and possession of industrial concern and realize the property pledged mortgaged, hypothecated or assigned and for which reason it was held in ***Karnataka State Financial Corporation*** (supra) that the property of a guarantor which did not find mention in Section 29 of the Act could not be taken over in exercise of powers thereunder, the phraseology of Section 32G of the Act is entirely different. The said provision is attracted when any amount is due to the State Financial Corporation. It is not disputed that amount is due to the respondent no.1 DFC for the accommodation granted by it to the respondent no.3. The Supreme Court, in para 35 of the judgment in ***Karnataka State Financial Corporation*** itself has held that Section 32G can be resorted to both against the industrial concern as also

the security. Reliance was placed on *Delhi Financial Corporation v. Rajiv Anand* (2004) 11 SCC 625 holding that if the intention was to limit the procedure under Section 32G only to the principal debtor, then legislature would necessarily have had used the words “amount due from the principal debtor” or “amount due from the industrial concern”. It is also not disputed that the petitioners had stood guarantors for the amounts so due. The petitioners in the Guarantee Bond executed by them had agreed that they will be liable to pay the said amount upon default by the principal borrower and further agreed that the Guarantee shall be enforceable against them notwithstanding that the securities specified in the loan agreement are outstanding and had yet further agreed to realization from them as if they were the principal borrowers.

8. The counsel for the respondent no.1 DFC has also referred to *Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala* (2009) 9 SCC 478 and to *Pawan Kumar Jain v. The Pradeshiya Industrial & Investment Corporation of UP Ltd.* 2004(6) SCALE 560

laying down that the liability of guarantor and principal debtor are co-extensive and not in the alternative.

9. In any case, in view of the specific terms of the Bond executed by the petitioners, they cannot contend that the respondent no.1 DFC should first exhaust all remedies against the principal borrower before proceedings against them. The respondent no.1 DFC has in any case stated that Recovery Certificate has been obtained against the principal borrower also but remains unexecuted.

10. The petitioners have therefore not been able to make out any case. The petition is dismissed. I refrain from imposing any costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 23rd, 2011
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