IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 944 of 2014 (O&M)
Date of decision: 20.10.2015

Pala Ram

... Petitioner

versus

Indusind Bank Limited and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Rajan Lakhanpal, Senior Advocate, with
Mr. Arjan Lakhanpal, Advocate for the petitioner.
Mr. Ashwani Talwar, Advocate for respondent No.1.

Mr. Tushar Gautam, Advocate for
Mr. Jasbir Mor, Advocate for respondent Nos. 2, 3 and 4.

K.Kannan, J.

The revision is against the order passed in execution allowing for the enforcement of the award against the guarantor, for a loan transaction on the basis of which the arbitral award was passed. The award made the principal debtor and guarantor liable jointly and severally for an amount of Rs. 15, 99, 327/- and Rs.250/- in its Clause 1 and have provided under Clause 2 that debtor should pay the amount within one month failing which the financial institution would seize the asset and sell the same at the best market price. Under Clause 3, it directed that if the sale proceeds were insufficient, it would be possible to enforce it against other respondents. There is also a direction under Clause 4 for return of the original invoice, registration certificate etc.

When the execution petition was levied for recoveries jointly against the petitioner who was a guarantor as well as the judgment debtor, an objection taken was that as per the terms of the award the remedy of the financier was only to seize the vehicle and sell the same at appropriate price towards the amount due and payable and only if it was insufficient, right of enforcement against the guarantor was possible. The Executing Court rejected this objection and allowed for further process in execution to follow.

Learned senior counsel appearing on behalf of the guarantor who is the revision petitioner states that on a parity of reasoning given by the judgment of the Supreme Court in Subhransu Sekhar Padhi Vs. Gunamani Swain and others, 2014 (12) SCC 368 that the State would be entitled to seize the property and put it for sale under Section 29 and resort to a guarantee without adopting the procedure under Section 29 would be erroneous.

I would hold the citation refered to be by the counsel to be wholly inapplicable in this case. The Supreme Court was pointing out to the statutory conditions by way of Section 29 and 31 under the Stae Financial Corporation Act and pointed out to the textual difference that while Section 29 contemplated seizure of assets for sale and Section 31 contemplated the enforcement of claim against the guarantor. It can hardly be a lesson for us where the award states under Clause 1 that the liability of the respondents for the amount determined by it would be joint and several. A guarantor at all times makes himself liable jointly and severally and the liability is also co-extensive with that of the judgment debtor in terms of Indian Contract Act Section 128. After setting out the joint and several liability, the award also provided that the respondents will seize the vehicle and put it for sale. I will take this to be merely a direction that was directory and giving a clear indicator to the decree holder the manner in which he can put the decree granted under the award for execution. The Clauses 2 to 4 could not to be taken as casting an eclipse on the wider expression used in Clause 1 of the award that makes the liability of all the respondents jointly and severally.

The order passed allowing for enforcement of the amount against the guarantor was in conformity with law and would call for no interference. It shall be open to the petitioner to seek for contribution from the judgment debtor in exercise of his right of subjugation as a surety and he will be even entitled to exercise the right of seizure of the vehicle of the principal debtor for sale after satisfying the amount due and payable to the decree holder under the award. The revision petition is dismissed but with above observations.

(K.KANNAN)
JUDGE

20.10.2015
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