IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11291 of 2012
DATE OF DECISION: February 28,2017

Beena Sehgal

…Petitioner

versus

State of Punjab and others

…Respondents

CWP No.13337 of 2014

Mohinder Pal

…Petitioner

versus

State of Punjab and others

…Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.M.S.Kang, Advocate for the petitioner (in CWP No.11291 of 2012) and for respondent No.5 in CWP No.13337 of 2014.
Mr.A.S.Gill, Advocate for the petitioner in CWP No.13337 of 2014 and for respondent No.5 in CWP No.11291 of 2012.
Mr.Yatinder Sharma, Additional Advocate General, Punjab.
Mr.Ashwani Prashar, Advocate for the Bank.

AMIT RAWAL, J.

The writ petition bearing CWP No.11291 of 2012 was filed by the guarantor (Beena Sehgal) and the other writ petition bearing CWP No.13337 of 2014 was filed by the original loanee (Mohinder Pal).

In both the writ petitions, a challenge was made to the order dated 7.10.2011 rendered by respondent No.1 i.e. Special Secretary Cooperation, Punjab whereby both the petitioners herein are held liable to repay the loan amount outstanding against the loanee.

The grievance of petitioner (Beena Sehgal) is that the fraud had been played upon her, inasmuch as, she did not know Mohinder Pal and, therefore, the question of creating equitable mortgage to secure advances by depositing the title deed did not arise. In fact, she, in essence, never stood guarantor for Mohinder Pal, but one Chetan Singh in the year 2002 had got her signatures on blank forms for giving a loan to her son, namely, Neeraj Sehgal.

Mr. A.S.Gill, Advocate appearing on behalf of Mohinder Pal submits that it was a Beena Sehgal who had taken the loan for her son.

Mr.M.S.Kang, learned counsel appearing on behalf of Beena Sehgal has raised multi-fold arguments which are as under:

(a) OD limit for Rs.4.70 lacs was sanctioned in the name of Messrs Inder Pal Mohinder Pal on 17.4.01 and entire amount was disbursed on 17.4.01 to respondent No.1. Nothing had been returned and on 31.3.03 and an amount of Rs.706745.99 was standing due in his OD khata. When Mohinder Pal had already taken more than the limit of his OD Khata on 31.3.03 then how another limit of Rs.4 lacs was sanctioned by the Bank in his personal name.

(b) He noticed that valuation report of the property of the guarantor was got prepared on 6.1.02 whereas application for loan was filed on 31.3.03 – why this was done, the Bank and its counsel were unable to explain. This proves the stand of Beena Sehgal that officials of the Bank had taken her signatures from her home for giving loan to her and thereafter she made quite a few rounds of the Bank with her son Neeraj Sehgal.

c) it is proved by the legal opinion on record that she did not have original copy of sale deed with her and the lawyer who gave legal opinion asked the bank to secure affidavit from Beena Sehgal that property was unencumbered. Non availability of the affidavit in the record of the Bank proves that the registry was with the Bank and that she did not become guarantor of Mohinder Pal on 31.3.03.

d) showing her as guarantor in OD khata no.29 and OD khata No.12 shows that officials of the Bank have played a fraud with her whereas it is nowhere pleaded by the Bank in this case that she was also guarantor in khata No.12 of Messrs Inder Pal Mohinder Pal.

e) CEO of the bank has admitted in cross examination that loan is advanced after taking current/latest jamabandi but in this case jamabandi attached was issued on 23.11.94. The Bank or its counsel could not explain this.

f) Bank could not produce any official to depose that Beena Sehgal has given guarantee for Mohinder Pal in his presence.

g) PW1 has stated that meeting of the BOD is summoned by issuing proper agenda after receiving application for loan. 15 days notice is given for the meeting and decision is taken on the loan application as per agenda. But in this case application was received on 31.3.03 and loan was disbursed on the same day. All this proceeding appears to be farzi.

h) Beena Sehgal has stated that she is not related to Mohinder Pal in any manner nor he is from her brotherhood and nor she knows him – why would she give guarantee of her property for him? Mohinder Pal has not denied this in his cross examination. Besides Mohinder Pal could neither tell the name of her husband, nor he could tell any relationship or family relationship with her which shows his story was wrong.”

On the contrary, Mr.Ashwani Prashar, learned counsel appearing on behalf of the respondent No.4-Bank submits that stand of Beena Sehgal had been shifting at all different stages. In the writ petition, plea is that one Chetan Singh had taken the signatures on blank forms for giving a loan to her son Neeraj Sehgal, whereas, before the authorities below that earlier loan raised by her son had been repaid to Jammu and Kashmir Bank, however, the original title deed was not returned and one Sharma, had collected the original title deed from J&K Bank for advancing/obtaining the loan for her son from Imperial Bank. He further submits that if at all Beena Sehgal had not appended her signatures, she could have led the possible evidence to establish the alleged fraud having been played upon her.

However, she failed to do so. Thus, the loan amount was outstanding against Beena Sehgal in view of equitable mortgage created by her and urges Court for dismissal of the petitions.

I have heard learned counsel for the parties.

At the time of hearing, Mr.Ashwani Prashar, Advocate was directed to produce original loan file which has been produced in the post lunch session. I am of the view that equitable mortgage was created by depositing the original title deed of residential house of Beena Sehgal, which admittedly signed by her. If at all, she did not append her signatures, she could have examined the Hand Writing Expert.

Thus, I am of the view that the story coined that too at different stages Beena Sehgal cannot succeed to avoid the liability. The cases of both the loanee and guarantor cannot stand on touch stone of reasonability. In essence, even the application form submitted by Mohinder Pal bears signatures, which has not been denied.

Mr.Prashar, on instructions from M.S.Sehgal, Director of Imperial Urban Cooperative Bank, submits during the course of hearing for effecting the recovery, would take all steps against the guarantor.

Keeping in view the aforementioned discussion, the writ petitions are dismissed. The order dated 7.10.2011 is upheld. The bank shall initiate the proceedings process as per submissions of Mr.Prahsar on the basis of instructions from M.S.Sehgal, Director of the Imperial Urban Cooperative Bank.

A copy of this order be placed in the connect case as well.

February 28,2017 (AMIT RAWAL)
KD JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No