IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 505 OF 2017

Pramila H. Thacker & Ors. …Petitioners
vs.
Abhyudaya Co-op.Bank Ltd. …Respondent

Mr.Manoj Khatri for Petitioners.
Mr.Madhur Rai I/b. PRS Legal for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 30 OCTOBER 2018

P.C. :

Heard learned Counsel for the parties.

2 This arbitration petition challenges an award passed by a sole Arbitrator under Section 84 of the Multi-State Co-operative Societies Act, 2002. The Petitioners herein, who were opponents to the arbitration reference, are legal heirs of the deceased borrower and guarantors of the loan given by the Respondent herein, who was the disputant before the Arbitrator. The sole Arbitrator, by his order dated 9 March 2017, directed the Petitioners herein to jointly and severally pay to the disputed bank the outstanding amount of the loan together with interest as also arbitration fee and costs.

2 Learned Counsel for the Petitioners raises the following points in support of his challenge to the award. Learned Counsel submits that the Respondent bank, apart from the guarantee given by Petitioner Nos.2 and

3 herein, had several other collateral securities for repayment of the loan. The repayment of the loan was secured by hypothecation of stock and book debts of the original borrower and also the collateral security of lien on Fixed Deposits and LIC policy of the principal borrower. Learned Counsel submits that the Respondent bank approached the arbitral forum without enforcement of these securities, seeking to recover the amount from the legal heirs of the deceased principal borrower as also from the guarantors. There is nothing in law to require the creditor to enforce any particular security given to him for enforcement of the debt. If the creditor chooses to invoke a particular security, his claim cannot be resisted on the ground that he has not opted to realise the other securities. There is, thus, no merit in the contention. The Arbitrator's award, in this behalf, does not demonstrate any breach of public policy of India or patent illegality appearing on the face of the award.

3 Learned Counsel for the Petitioners, secondly, submits that the surety in the present case has been discharged for non-realization of the security, to the benefit of which the sureties are entitled. Learned Counsel bases his submissions on Sections 139 and 141 of the Indian Contract Act. Under Section 141 of the Contract Act, the surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship was entered into, whether or not the surety knows the existence of such security; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security. Under Section 139, if the creditor does any act inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the

eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged. The fact that the creditor has not realised a particular security, which would have enured to the benefit of the surety or which would be part of the latter's eventual remedy, is no ground for discharge of surety under Section 139 or Section 141 of the Contract Act. It is only when the security is lost unto the surety or the eventual remedy of the surety against the principal debtor is impaired due to any act or omission on the part of the creditor, that these sections can be invoked. It is not the case of the Petitioners in the present arbitration reference that by reason of any act or omission on the part of the Respondent bank, the securities created by the principal debtor in favour of the Respondent bank have either been lost or have become irrecoverable or any remedy that the surety may have had against the principal debtor has been impaired. Mere non-enforcement of any such security or non-furnishing of any statement in respect of the same does not amount to loss of security or impairment of remedy. The impugned award cannot, thus, be faulted even on this ground.

4 There is, accordingly, no merit in the challenge. The arbitration petition is dismissed.

5 Learned Counsel for the Respondent bank agrees to deletion of the second part of Clause 4 of the operative award, which declares the security of personal properties of the Petitioners in respect of the amount of the award. Accordingly, Clause 4 of the operative part of the award shall be read down to cover only the security by hypothecation of stock and book debts of Opponent No.1.

6 In view of the disposal of the petition, the notice of motion does not survive and the same is also disposed of.

(S.C. GUPTE, J.)