**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.8754 of 2016 (O&M)
Date of decision: 21.04.2018

Ravi Mahajan

.......Petitioner

versus

Indian Overseas Bank, Pathankot

......Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Saurabh Bajaj, Advocate, for the petitioner.
Mr. C.S. Pasricha, Advocate, for the respondent.
Mr. Hiteshwar Singh, Assistant Manager,
Indian Overseas Bank, Pathankot.

RAMENDRA JAIN, J. (ORAL)

Through this revision under Article 227 of the Constitution of India, challenge has been laid to order dated 21.10.2016 (Annexure P-9) of the trial Court and order dated 07.12.2016 (Annexure P-10) of the First Appellate Court, whereby application of the petitioner under Order 39 Rules 1 and 2 CPC was dismissed.

Undisputedly, petitioner stood guarantor against the loan amount taken by M/s United Wires Products, Pathankot, wherein his real brother was a partner. When the borrower did not adhere to the financial discipline of the respondent-bank, it started proceedings against the borrower under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act").

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2018.04.24 14:29
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Challenging the aforesaid action of the bank, petitioner filed a suit for declaration to the effect that notice issued by the respondent-bank to him dated 11.04.2015 under Section 13(2) along with notices under Section 13(4) of the SARFAESI Act as a guarantor in the loan account of M/s United Wires Products may be treated as null and void, because he had stood guarantor for a limited period upto 2011 and thereafter he had no liability to pay any amount under his guarantee against the loan of the borrower. Petitioner also took the plea in his plaint that his signatures, if any, extending the period after the year 2011 were forged and fabricated by the respondent-bank and, therefore, same had no binding effect on him.

Along with the suit, petitioner-plaintiff filed application under Order 39 Rules 1 and 2 read with Section 151 CPC.

The trial Court, after hearing both the sides, dismissed the application of the petitioner aforesaid vide impugned order dated 21.10.2016 observing that no *prima facie* case was made out by the petitioner in his favour. Balance of convenience also lies more in favour of the respondent-bank. The matter of re-payment of public money was involved in the suit.

Being aggrieved, petitioner approached the First Appellate Court for obtaining stay against the action of the respondent-bank till the decision of his suit, but remained unsuccessful as his appeal too was dismissed vide impugned order dated 07.12.2016.

Learned counsel for the petitioner *inter alia* contends that both the Courts below have failed to appreciate that respondent-bank has forged his signatures over the documents for extending the guarantee furnished by him mortgaging his house. Petitioner had stood guarantor in between and not when the loan was advanced to the borrower. Ignoring the report of the handwriting and fingerprint expert that the disputed signatures of the petitioner on the bank papers do not tally with his admitted signatures and,

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2018.04.24 14:29
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therefore, there was a forgery in the alleged signatures of the petitioner for extension of bank guarantee.

On the other hand, learned counsel for respondent-bank has vehemently opposed the submissions of learned counsel for the petitioner, urging that a guarantee given by a person automatically extends and no separate document for its extension is required to be executed by its guarantor or borrower. Both the Courts below have rightly dismissed the stay application of the petitioner.

Having given considerable thought to the submissions made by learned counsel for both the sides, I find that this revision is completely devoid of any merit for the reasons to follow.

Petitioner cannot be permitted to play hide and seek. At one hand, he is submitting that he did not stand guarantor for the borrower after the year 2011, whereas vide letter dated 22.07.2017 (Annexure R-1) he has categorically admitted that he has stood guarantor for the loans disbursed to M/s United Wire Products Lodhwan and had pledged his residential house situated at Sunder Nagar, Pathankot. Admitting so, the petitioner offered the respondent-bank to pay the value of the mortgaged house as was assessed by the bank immediately on receipt of confirmation. The above admission of the petitioner-plaintiff in his own communication (Annexure R-1) has negated the plea of the petitioner that he never remained as guarantor after the year 2011 against the loan amount advanced to the borrower M/s United Wires Products. He is estopped by his own act and conduct to take such a plea.

That apart, the petitioner in his own letters sent to the respondent-bank dated 28.02.2014, intending to withdraw his guarantee for subsequent period, admitted himself guarantor to borrower M/s United

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2018.04.24 14:29
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Wires Products to the extent of 50% share. When as per his own case, that he remained no more guarantor of the borrower after the year 2011, in that eventuality there was no need for him to write a letter to the bank intending to withdraw his guarantee. The trial Court has rightly observed that guarantee deed dated 24.05.2013 bears the signatures of the petitioner, which is a matter of evidence so to be adjudicated upon after appreciation of evidence so to be led by both the sides.

I have gone through the impugned orders of both the Courts below and find no illegality or perversity in the same. They are perfectly legal and well-reasoned.

In view of the discussion above, the revision fails and the same is dismissed.

(Ramendra Jain)
Judge

April 21, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No.

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