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

\+ W.P.(C) 7212/2017

CANARA BANK ..... Petitioner

Through: Ms. Seema Gupta, Adv.

versus

SHRI VIJAY KUMAR GUPTA ..... Respondent

Through: Mr. Abdhesh Chaudhary, Mr. Akshat Gupta and Mr. Yogesh Kumar Keshari, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **06.09.2018**

1. The present writ petition has been filed by the petitioner Bank challenging the order dated 5th October, 2016 passed by the Debt Recovery Appellate Tribunal in Appeal no. 280/2016 and order dated 20th June, 2016 passed by Debt Recovery Tribunal-II, New Delhi in Appeal no. 69/2015 thereby restricting the appellant Bank to recover an amount of Rs. 50,00,000/- + interest / cost from the respondent herein.

2. The facts as noted from the record are the petitioner Bank had filed an Original Application being no. 75/2005 for recovery Rs.1,08,95,051/- along with pendente lite and future interest @13.10% per annum computed monthly with penal interest @ 2 % per annum before the DRT-II, New Delhi. On 30th May, 2014, the OA was allowed by the DRT-II, New Delhi and the respondent and others were held liable to pay a sum of

Rs.1,08,95,051/- with simple interest @13.10 per annum from 25th July, 2005 till realization with cost. On 7th July, 2015, DRT-II, New Delhi has clarified its final judgment dated 30th May 2014 on an application being MA. No. 118/2014 filed by the respondent herein by amending Para 17 (ii) thereof holding that the liability of the respondent shall be limited to the extent of Rs.50,00,000/- with interest commencing from 30th November, 2002 with cost and charges and accordingly, issued amended recovery certificate. The petitioner bank had initiated the recovery proceedings and had put the mortgaged property bearing no. 66/3, first and second floor rear portion, 66 Banarsi Das Estate, Lucknow Road, Civil Lines, Delhi for e-auction on 30th October, 2015 by fixing the reserved price at Rs.3.93 Crores. It appears that respondent had filed objections to the auction notice which was rejected by the DRT-II vide order dated 23rd October, 2015. This resulted in the respondent filing an appeal being 69/2015 challenging the order dated 23rd October, 2015 before the DRT. The DRT vide order dated 20th June, 2016 allowed the appeal of the respondent holding that the respondent is liable for Rs.50 lacs with interest, cost and charges either by selling of the mortgaged property or through personal liability. The petitioner Bank had filed an appeal bearing no. 2802/06 before the DRAT challenging the order dated 20th June, 2016. The DRAT has finally vide order dated 5th October, 2016 dismissed the appeal of the petitioner by holding as under:

> *"In my view, the interpretation being given by the learned counsel for the appellant bank to Para 17 (ii) of the original order of the DRT is not correct inasmuch as if the liability of the respondent / guarantor has been accepted by the DRT as well as by the appellant bank to*

be restricted to Rs.50 Lacs plus interest etc. then it becomes clear that as far as Para 17 (iii) is concerned, the same would apply only to the 'debt' recoverable from respondent / guarantor and in case any other interpretation is given, the entire purpose of any guarantor restricting his liability to a particular amount would get defeated if, at the end of the day, he is to pay more amount than what he had agreed to pay in case of default by the principal borrower. In case the mortgaged property in the present case is sold, say for Rs.2 crore, and the entire amount is to be appropriated towards the discharge of the liability of the principal borrower, that would amount to forcing the respondent / guarantor to accept the liability for which he never stood guarantee."

3. It is the submission of the learned counsel for the petitioner that it is undisputed that the respondent no.1 stood guarantor for the loan advanced to the borrowers and had mortgaged the property as well. She stated that the liability of the respondent would be for the whole of the loan amount claimed by the petitioner Bank in the Original Application before the DRT. The DRT and DRAT were in error in confining the liability of the respondent to the extent of Rs. 50 Lacs.

4. On the other hand, learned counsel for the respondent has justified the impugned orders of the DRT/DRAT. He has drawn our attention to page 178 of the paper book which is the letter of the respondent addressed to the petitioner Bank wherein according to him, it was clearly stated that the guarantee was only to the extent of maximum limit of Rs. 50 Lacs and also to secure the interest, cost and charge and expenses thereon. In other words, the liability could not have been to the extent of Rs.1,08,95,051/-, the break-up of which is as under:

i) The outstanding amount as on 23.07.2005 *(inclusive of interest till 31.07.2004)* *Rs.94,15,213.74*

(ii) Unapplied interest due from 01.08.2004 to 23.07.2005 (calculated @ 13.10% p.a. compounded at monthly rests) *Rs.12,93,642.00*

(iii) Penal Interest from 01.08.2004 to 23.07.2005 (@2% p.a. simple) *Rs.1,86,196.00*

Total *Rs.1,08,95,051.74"*

On a specific query from the court to the learned counsel for the petitioner whether the petitioner Bank disputes the document as pointed out by the learned counsel for the respondent, the answer was in the negative. On perusal of the letter relied upon by the learned counsel for the respondent it is clear that the respondent stood guarantor for an amount to a maximum limit of Rs.50 Lacs of principal and to secure the interest, cost, charges and expenses thereon and nothing more. In view of the said letter of the respondent, we are of the view that the DRT / DRAT were justified in the impugned orders.

We do not see any merit in the petition. The petition is dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 06, 2018/*jg*