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

+ W.P.(C) 11636/2018 with C.M. No. 44934/2018

RAJESH AGGARWAL

..... Petitioner

Through: Mr. Arvind Kumar with Mr. Vaibhav
Kumar, Advs.

versus

VAISH CO-OPERATIVE ADARSH BANK LTD. AND ORS.

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

29.10.2018

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C.M. No. 44935/2018

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 11636/2018 with C.M. No. 44934/2018

The petitioner has preferred the present writ petition to assail the order dated 26.09.2018 passed by the Delhi Cooperative Tribunal in Appeal No. 221/16/DCT arising from Arbitration Case No. 187/DR/ARB /2000-01. The Tribunal has rejected the interim application seeking stay of the execution of the award qua him. The principal debtor had availed of a loan from the respondent cooperative bank. Since, the loan was not repaid, the matter went to Arbitration and a consent award was passed against the principal debtor. Since the amount was not paid, the same was sought to be deducted and recovered from the salary of the petitioner who, according to

the respondents was the surety. The salary of the petitioner stands attached and recovery is being made therefrom. In this background, the petitioner moved the Delhi Cooperative Tribunal to seek stay of the award qua him and for setting aside the attachment order dated 12.03.2018. That application has been rejected by the impugned order.

The first submission of the learned counsel for the petitioner is that he should have been made a party to the Arbitration proceedings and served with the notice. We reject this submission. The petitioner was impleaded as respondent No.3 in the arbitration proceedings. The award records that notices were sent to the three respondents by Regd. Post/ courier for 09.11.2000. Thus, a presumption arose with regard to service of notice upon the petitioner, which has not been rebutted.

The next submission of the learned counsel for the petitioner is that the award is a consent award. Be that as it may, it was not necessary for the principal borrower to contest the claim. The consent given by the petitioner binds the petitioner surety.

The next submission of the learned counsel for the petitioner is that he did not stand surety. This is a disputed question of fact which cannot be gone into in the proceedings. The petitioner has already assailed the award and the appeal is pending before the Tribunal.

The further submission of learned counsel for the petitioner is that no steps were taken to recover the amount from the principal borrower. Even this submission has no merit. The liability of the principal borrower and the guarantee/ surety is co-extensive and it does not lie in the mouth of the surety to claim that first the amount should be recovered from the principal borrower.

We find no merit in this petition.
Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

OCTOBER 29, 2018
N.Khanna