

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14266 OF 2018

BABAN MANOHAR JADHAVAR

...PETITIONER

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

...RESPONDENTS

Mr. J.M. Murkute, Advocate for Petitioner
Mrs. Geeta L. Deshpande, AGP for Respondents-State
Mr. S.V. Gundre, Advocate for Respondent Nos. 4 and 5

**CORAM : S. V. GANGAPURWALA AND
ANIL S. KILOR, JJ.**

DATE : 26th AUGUST, 2019

ORAL ORDER:

1. We have heard Mr. Murkute, the learned Counsel for the petitioner and Mr. Gundre, the learned Counsel for the respondent Nos. 4 and 5.

2. The amount of Rs. 1,00,000/- has been deducted for payment of dues outstanding towards respondent No. 5. It is the case of the petitioner that the respondent No. 6 is a principal borrower and the petitioner is a guarantor. The recovery ought to be made against respondent No. 6. The steps are not being taken by the Creditor against the principal borrower.

3. As per section 126 of the Indian Contract Act, the liability of the guarantor is co-extensive with that of the principal borrower.

4. Unless rules are pointed out to suggest that recovery shall first be made against the principal borrower and then only against the guarantor, the contention of the petitioner cannot be accepted. The petitioner has also given undertaking to the employer to retain an amount of Rs. 1,00,000/- in respect of the dues of the respondent No. 5.

5. Even otherwise, the petitioner will have right to recover the amount from the principal borrower in respect of the payment made by the petitioner as a guarantor.

6. With these aforesaid observations, the Writ Petition is disposed of. No costs.

[ANIL S.KILOR]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

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