HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

+ CIVIL REVISION PETITION No.1143 of 2019

%30-04-2019

Muthyala Prasanna Sree

....Petitioner

Vs.

$ M/s. Shriram City Union Finance Limited, Karimnagar-II branch
and others .... Respondents

Counsel for the Petitioner : Sri P. Ravi Kiran

Counsel for the Respondents : ---

<Gist :

>Head Note:

? Cases referred:

2015(5) ALT 114 (S.B.)

(2015) 7 Supreme Court Cases 337

(2012) 11 SCC 511

1998(8) SCC 653

2015(2) SCC 189

HON'BLE THE ACTING CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

CIVIL REVISION PETITION No.1143 of 2019

ORDER: *(per the Hon'ble Sri Justice A. Rajasheker Reddy)*

This Civil Revision Petition is filed against the order dated 18.02.2019 passed by the learned District Judge, Karimnagar, in E.P.No.58 of 2019 in Arbitration Case No.189 of 2016, for attachment of the salary of the petitioner.

Learned counsel for the petitioner submits that instead of proceeding against the principal judgment debtor, the decree holder is proceeding against the petitioner leaving the other sureties, which is arbitrary and illegal, and that the decree holder should have first proceeded against the principal judgment debtor and thereafter, against the sureties. In support of the same, he relied on the judgment of the learned Single Judge of this Court in **M.A. Raoof v. Vishnu Chit Funds Private Limited, Hyderabad and others**[1].

In this case, it is to be seen that based on the Arbitral Award dated 25.02.2017 passed by the Sole Arbitrator, Karimnagar Town and District, the decree holder is proceeding against the petitioner by way of filing the impugned E.P.No.58 of

[1] 2015(5) ALT 114 (S.B.)

2019. A perusal of the aforesaid Arbitral Award discloses that decree holder is entitled to recover the amount due from the principal debtor as well as the sureties jointly and severally.

Section 128 of the Contract Act, 1872, provides for surety's liability, which reads as follows:

> "128. Surety's liability.—The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract."

The legislature has succinctly stated that the liability of the guarantor is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. The only exception to the nature of the liability of the guarantor is provided in Section 128 itself, which is only if it stated explicitly to be otherwise in the Contract. It is the prerogative of the Creditor alone whether he would move against the principal debtor first or the surety, to realize the loan amount. Therefore, the creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as to how he should make the recovery and pursue his remedies against the principal debtor at his instance. The Clauses in the letter of guarantee are binding on the guarantors (See **Central Bank of India v. C.L.Vimla and others {(2015) 7 Supreme Court Cases 337}; Ram Kishun and Others v. State of U.P. and Others {(2012) 11 SCC 511} and United Bank Of India v. Bengal Behar Construction Co. Ltd., and others {1998 (8) SCC 653}**).

In this case, it is not the case of petitioner that guarantee provided in the agreement entered between principal debtor and decree holder and sureties is otherwise limiting liability of sureties, and based on the said agreement only, Arbitral Award was passed. Petitioner not only remained *ex parte* before Arbitral Tribunal, but also, did not challenge the Award regarding her liability, as such, the Award has become final. In view of same, the executing Court has no other option except to follow the Award while enforcing the same. With great respect, decision cited by learned counsel for petitioner in **M.A. Raoof** (1 supra) is no longer good law and also per incuriam, in view of law laid down by Apex Court in **C.L. Vimla** (supra) and **Bengal Behar Construction Co. Ltd. (supra),** and that Section 128 of Indian Contract Act also does not make any distinction in respect of liability of sureties in chit fund transactions (See **Hyder Consulting (UK) Limited v. Gouesuer of Orissa through Chief Engineer -** 2015(2) SCC 189).

Accordingly, we see no reason to interfere with the impugned order passed by the executing Court.

The Civil Revision Petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

Date: 30.04.2019

A. RAJASHEKER REDDY, J

Note: L.R. Copy be marked.

kvni