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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-8464-2017 (O&M)

Date of decision : 17.01.2019

Baljinder Singh

... Petitioner

Versus

The Punjab State Cooperative Bank Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Sharma, Advocate
for the petitioner.

Ms. Saumya Ahluwalia, Advocate
for respondent No.1.

Mr. Sunil Kumar, Advocate
for respondent No.3.

AMIT RAWAL, J. (ORAL)

The petitioner-defendant No.2 is in the present revision petition against the impugned order dated 31.03.2017, whereby his salary has been ordered to be attached by order of warrant.

The facts, which are necessary for the adjudication of the *lis* are that the Punjab State Cooperative Bank Limited/respondent-plaintiff/decreed holder sought the reference under Sections 55 and 56 of the Punjab State Cooperative Societies Act, 1961 (in short 'the 1961 Act') against Dalvinder Kaur w/o Karnail Singh, principal borrower, for a recovery of ₹1,30,178/- including interest as on 31.07.2014 along with future interest w.e.f. 01.08.2014 till realization @ 16% per annum with quarterly rest and cost of ₹11,000/-. Judgment debtor Nos.1 and 2 were proceeded *ex parte*, whereas JD No.3 appeared on various dates and undertaken the loan liability of

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Dalvinder Kaur by standing guarantor for her. In terms of the aforementioned position, Registrar, Co-operative Societies, Punjab, Chandigarh passed the award for recovery of the aforementioned amount along with interest giving right to the Bank to recover the same from JD Nos.1 to 3, jointly and severally.

The Bank filed the execution application in the year 2016. The petitioner-defendant No.2 and defendant No.3/JD filed the separate objections. In the objections of the petitioner, it was stated that Dalvinder Kaur, who had been working in the Punjab State Electricity Board (now Punjab State Power Corporation Ltd.), had retired in the year 2012 and suggested that the Bank should approach the Department of the principal loanee to adjust the due amount from the retiral benefits.

Learned counsel for the petitioner-defendant No.2 submitted that the Bank has not taken any steps for recovery against Dalvinder Kaur, in accordance with law, even if, she had retired, the amount can be recovered as decretal amount is not so enormous, so it has become un-achievable. No doubt, the liability was joint or several, but no concrete steps have been taken by the Department to *prima facie* establish on record except retirement. The impugned order, under challenge, is not sustainable in the eyes of law.

Learned counsel for the respondent(s) supported the impugned order and submitted that once the liability is joint and several, the guarantor cannot be permitted to take the said plea. It is the discretion of the Bank to recover the amount, thus, urges this Court for dismissal of the present revision petition.

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I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and submissions of Mr. Sandeep Sharma.

The passing of the award and fastening of the liability jointly and severally are not in dispute. The only point to be determined is whether the Bank had taken any earnest steps to recover the amount from Dalvinder Kaur, particularly, when she was stated to be serving with the erstwhile Punjab State Electricity Board (now PSPCL) and had retired. The Executing Court simply by noticing her retirement could not have issued warrant of attachment of salary of the petitioner-defendant No.2, particularly JD No.3, during the proceedings of the arbitration, had undertaken to pay the liability. It was open and shut case, but unnecessarily has been complicated.

As an upshot of my observations, the impugned order, under challenge, is not sustainable in the eyes of law, thus, the same is hereby set aside. The Executing Court is directed to proceed with the matter in view of the observations, aforesaid.

Accordingly, the revision petition is allowed.

17.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**