

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 295 of 2021

- Smt. Suman Singh @ Suman Rawani, W/o Shri Sunil Singh, Aged About 50 Years, Occupation - Advocacy, R/o- Deviganj Road, Infront of Street of Yashoda Lodge, City Ambikapur, Post Office G.P.O. Ambikapur, P.S. and Tahsil Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh (Resp. No.2)

---- Petitioner

Versus

1. Raj Wardhan Singh S/o Late Nar Narayan Singh, Aged About 50 Years, Occupation - Advocacy, R/o Deviganj Road, Behind Jaiswal Chitra Mandir, City Ambikapur, Post Office G.P.O. Ambikapur, P.S. and Tahsil Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh (Applicant No.1)
2. Smt. Sandhya Singh W/o Shri Raj Wardhan Singh, Aged About 46 Years Occupation - Housewife, R/o Deviganj Road, Behind Jaiswal Chitra Mandir, City Ambikapur, Post Office G.P.O. Ambikapur, P.S. and Tahsil Ambikapur, District Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh (Applicant No.2)
3. Sunil Singh S/o Shri R.P. Singh, Aged About 51 Years, Occupation - Business (Property Dealer), R/o Deviganj Road, Infront of Street of Yashoda Lodge, City Ambikapur, Post Office G.P.O. Ambikapur, P.S. and Tahsil Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh (Res No.1)

---- Respondents

For Petitioner – Shri Neeraj Mehta, Advocate.

For Respondents No.1 and 2 – Shri A.K. Prasad, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

13-09-2021

1. This petition has been brought being aggrieved by the order dated 02-02-2021 passed by the First Additional District Judge, Ambikapur, District Surguja, Chhattisgarh by which the application filed by the petitioner under Order 1 Rule 10 of the CPC praying for deletion of her name from the suit was dismissed.

2. It is submitted by learned counsel for the petitioner that respondent No.1 and 2 have filed a civil suit praying for recovery of amount of Rs.33,50,000/- against respondent No.3 and the petitioner. The agreement for loan transaction was between the respondent No.3 as one party and respondents No.1 and 2

as the second party in which clearly the petitioner was not a party to the agreement, therefore, her impleadment as a party in the civil suit is without any basis. It is also submitted that in case the respondent No.1 and 2 succeed in the civil suit, effective decree can be passed against respondent No.3 alone. Hence, the impugned order passed is erroneous, illegal and unsustainable.

3. Learned counsel for respondents No.1 and 2 opposes the submissions and submits that it is clearly pleaded in the plaint that the petitioner/defendant No.2 had orally guaranteed the repayment of loan which was advanced to respondent No.3 under the agreement, therefore, she is a necessary party.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **Gurmit Singh Bhatia Vs. Kiran Kant Robinson and others**, (2020) 13 SCC 773. It is submitted that the plaintiff is dominus litis and he has right to implead necessary and proper party.

4. Considered on the submissions. On perusal of the pleadings in the plaint copy of which is attached with this petition, it is found pleaded that the petitioner/defendant No.2 had given assurance and guarantee that in case of default of repayment of the loan by respondent No.3, she will take the responsibility of making repayment of the loan.

5. Section 126 of the Indian Contract Act, 1872 provides as follows:-

"126 'Contract of guarantee', 'surety', 'principal debtor' and 'creditor' – A 'contract of guarantee' is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written."

6. The provision is very clear on this point that a contract of guarantee may

be either oral or written. According to the plaintiffs' case, the petitioner has given oral guarantee for the repayment of the loan, on this basis and on the basis of the pleadings that are present in the plaint, the petitioner appears to be a necessary party in this case. Hence, I am of this view that the trial Court has not committed any error in passing the impugned order. Therefore, this petition is dismissed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge