**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CWP-22412-2018 (O&M)
Date of Decision: September 06, 2022.**

IndusInd Bank Limited

...Petitioner

Versus

Balbir Singh and another

…Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

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Present: Mr. Anuj Kohli, Advocate for the petitioner.

Sh. Balbir Singh, respondent No.1 in person.

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VINOD S. BHARDWAJ. J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the Award dated 15.06.2018 (Annexure P-4) passed by respondent No.2 - Permanent Lok Adalat (Public Utility Services) Hisar, in favour of respondent No.1-applicant.

2. Briefly, the facts of the instant case are that respondent No.1 – applicant preferred an application under Section 22 (C) of the Legal Services Authority Act, 1987, against the petitioner Bank pointing out that the respondent No.1-applicant had applied for availing a loan of

Rs.10 lacs with the LIC Housing Federation, Hisar, for the renovation of his house No.605 and construction of first floor thereupon. On the advice of the Housing Finance Federation, the respondent No.1-applicant got prepared the estimate and submitted the other necessary documents after incurring huge expenditure of Rs.10,000/-. However, when the Financer checked the record on the site of Credit Information Bureau India Limited (hereinafter referred to as 'CIBIL') to verify the antecedents of the respondent No.1-applicant and to determine as to whether the respondent No.1-applicant was a defaulter of any bank or not, it was informed to the respondent No.1-applicant that as per the CIBIL record, he was the defaulter of the petitioner IndusInd Bank on account of the non-payment of a sum of Rs.1912/-.

3. The respondent No.1-applicant contacted the office of the petitioner Bank and apprised them on numerous occasions that he had never availed any loan from the bank and as such, there was no reason why he has been shown as a defaulter on the record of CIBIL. Upon verification of the record by the petitioner Bank, it was revealed that loan details of some other Balbir Singh, resident of Quarter No.8-A, Old Campus, Hisar, was inadvertently shown against the PAN number of the respondent No.1-applicant. On account of the aforesaid negligence/act on the part of the petitioner Bank, the loan in favor of respondent No.1-applicant could not be released. It was claimed that the respondent No.1-applicant had to manage money by raising loan at an exorbitant rate of interest and he also suffered harassment on account of lowered image in the Society due to his CIBIL ratings.

4. Pursuant to the notice issued, a response was filed by the petitioner Bank wherein it was contended that there was no false information furnished by the petitioner Bank to the CIBIL and that upon the aforesaid defect having been brought to their notice, an advisory was sent to CIBIL to remove the name of the respondent No.1-applicant from their system in which the respondent No.1-applicant was shown to be the defaulter. Eventually, the name of the petitioner was removed from the system of CIBIL. It is further submitted that the error was on the part of CIBIL and was not attributable to the petitioner.

5. Upon consideration of the respective submissions advanced by the parties, the Permanent Lok Adalat (Public Utility Services) Hisar, allowed the application submitted by respondent No.1-applicant and came to a conclusion that the burden lay upon the petitioner IndusInd Bank to establish that there was no default on their part in furnishing any wrong information with the CIBIL especially when the default was being reflected on the CIBIL at the behest of the petitioner bank. An Award of Rs.30,000/- was passed in favour of respondent No.1-applicant along with interest @ 9 per cent per annum from the date of filing of the application till realization of the amount.

6. The said award has been assailed by the petitioner bank by contending that an application had been moved on behalf of the petitioner bank before the Permanent Lok Adalat (Public Utility Services) Hisar, seeking that CIBIL should be impleaded as a necessary party since the updation of the record was done at the end of the CIBIL.

He contends that the petitioner bank should not have been held liable and award against the Bank could not have been passed.

7. The submissions of the petitioner were controverted by the respondent who appeared in person. It was argued that the default in CIBIL was shown as updated on the information and at the behest of the petitioner Bank. The fact that the rectification of the error was done on the asking of the petitioner Bank clearly shows that the Bank is accountable for the information uploaded on CIBIL and it cannot now hold itself harmless under this ruse.

8. I have heard the learned counsel appearing on behalf of the petitioner as well as respondent in person and have gone through the pleadings and the record with their assistance.

9. The contentions raised by the petitioner do not impress this Court. The CIBIL is an association of the Banks which has been formulated by them for facility of their operations and to keep a track of defaulting loanees. The system reflected that a person by the name similar to the respondent No.1-applicant had committed a default, however, the PAN account details of the respondent No.1-applicant had been updated on the CIBIL purportedly at the behest of the petitioner Bank. The CIBIL thus uploads the information as an agent of the Bank and upon the instructions issued by such Bank. The profile is not generated at the ends of CIBIL, but only updated. Hence, the informant shall remain accountable for the information furnished by it.

10. The argument by the counsel that the petitioner ought to have impleaded the CIBIL as a party thus deserves to be rejected since the Bank remains the Principal in so far as the relationship between the Bank and CIBIL in reference to the updating of default information is concerned. The Principal is even otherwise responsible for the acts of its agent and as such, once the Bank was already a party, the claim of the respondent cannot be ousted on the alleged non-joinder of the CIBIL.

11. It has next been argued by the learned counsel for the petitioner that the respondent-claimant has failed to lead evidence from CIBIL to the effect that the mistake was on the part of the Bank. In such absence, the Bank cannot be held liable.

The aforesaid argument is devoid of merit. The documents appended by the respondent show that the petitioner Bank had furnished report to CIBIL and in the information given by CIBIL, it specifically attributed the information to the Bank.

12. Furthermore, in so far as burden of proof is concerned, Section 102 of the Evidence Act, 1872, puts burden of proof on a person, who would fail, if no evidence were given. Relevant provisions of Section 101 and Section 102 of the Evidence Act, read thus:-

> *"101. Burden of proof. — Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

> *102. On whom burden of proof lies. — The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

13. Evidently, the plea was taken in defence by the petitioner Bank that information was uploaded by CIBIL. Hence, the case of the Bank suffers a prejudice for failure to lead its evidence with respect to the uploading of the said information.

14. It was open to the petitioner Bank to lead substantive evidence to establish that the default occurred at the end of the CIBIL, without any participation on the part of the petitioner Bank. The very fact that an advisory was eventually issued by the petitioner Bank whereupon the name was deleted, shows that the incorporation of the name of the respondent No.1-applicant as a defaulter in the CIBIL record was a direct outcome of the information furnished by the petitioner Bank. In any case, the respondent No.1-applicant cannot be held responsible for any communication between the petitioner Bank and their organization i.e. CIBIL. The petitioner cannot take benefit of the alleged failure of respondent and has to prove its case on its own merit. The failure to lead best evidence to prove its defence would burden the petitioner for the loss or damages.

15. Even otherwise, the grant of award does not in any manner preclude the petitioner Bank for seeking prosecution of CIBIL and also seeking refund of the amount as awarded against the petitioner Bank. It would be open to the petitioner Bank to take recourse to the appropriate proceedings against CIBIL for indemnification of the loss suffered by

the petitioner Bank. Hence, on the said score itself, the petitioner Bank is under an obligation which it owes to respondent No.1-applicant.

16. I find that there is no illegality, perversity, or impropriety by in the order passed by the Permanent Lok Adalat (Public Utility Services) Hisar. The present petition is accordingly devoid of any merits and is thus dismissed.

September 06, 2022 **(VINOD S. BHARDWAJ)**
rajarora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No