

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.4567 of 2018

PRADIP S/O RANGRAOJI BHAGWAT

VS

NISHANT SAHAKARI GRAMIN PAT PURWATHA SANSTHA LTD., AKOLA AND 4 OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.J. Kadu, Advocate for the Petitioner

Shri Amol Patil, Advocate for the respondent No.1

CORAM : ANIL S. KILOR, J.

DATED : 08.02.2023

1. Heard.

2. In this writ petition, the judgment and order dated 15.09.2017 passed by the Maharashtra State Co-operative Appellate Court, Mumbai Bench at Nagpur in Appeal No.11 of 2017, dismissing the appeal preferred by the petitioner and thereby, maintaining the judgment and order passed by the Judge, Co-operative Court, Akola in Dispute No.575 of 2010 filed by the respondent No.1/Nishant Sahakari Gramin Patsanstha Ltd. and thereby, partly allowing the dispute and directing the petitioner and the respondent Nos.2 to 4 to pay Rs.12,49,000/- jointly and severally to the respondent No.1 with interest @ Rs.14 % per annum from the date of filing of the dispute i.e. 27.10.2010, till its realization, is under challenge.

3. The facts of the present case in short are as follows:

The respondent No.1/Patsanstha filed a dispute against the petitioner and the respondent Nos.2 to 4, who are the members

of the respondent No.1 Patsanstha. The respondent No.2 has a business and who is one of the directors of the Sidheshwar Travels Pvt. Ltd., Akola, who took the contract to run city buses in the area of Nanded-Waghela Municipal Corporation and executed an agreement on 10.03.2008 to that effect and accordingly, the respondent No.2 applied for personal loan for purchase of buses.

4. The loan was sanctioned for Rs.14,65,708/- in favour of the respondent No.2. The petitioner and the respondent Nos.3 to 4 stood as guarantors to the loan taken by the respondent No.2. Because of the default committed by respondent No.2 in making payment, the dispute was filed for recovery of amount Rs.15,67,000/- along with further interest, under Section 91 of *the Maharashtra Co-operative Act, 1960*, which was partly allowed and the petitioner and the respondent No.2 to 4 were directed to pay Rs.12,49,000/- jointly and severally with interest @ Rs.14 % from the date of filing of the said dispute till its realization. The said judgment and order dated 25.05.2016 passed by the Co-operative Court was maintained by the Maharashtra State Co-operative Court in Appeal No.11 of 2017 vide impugned judgment and order dated 15.09.2017 and hence, this writ petition.

5. The learned counsel for the petitioner has made following two submissions;

(i) the dispute ought to have dismissed on the ground of non-joinder of necessary party. It is submitted that the buses were taken in the name of Sidheshwar Travels Pvt. Ltd.,

Akola and the loan was obtained for purchase of buses under the name and style Sidheshwar Travels Pvt. Ltd., Akola and as the said travel company was not made party to the dispute, the dispute ought to have dismissed for non-joinder of necessary party; and

(ii) the petitioner is one of the guarantors and the respondent No.1/Patsanstha ought to have first initiated action against the borrower and then against the guarantors.

6. While considering the first submission of the learned counsel for the petitioner, I have perused the findings recorded by the Co-operative Court, Akola. While answering the issue No.6, which was in respect of the non-joinder of party, the Court has categorically held that the said travel company was not the borrower but the respondent No.2 is the borrower and the petitioner and the respondent Nos.3 and 4 stood as guarantors to the said loan transaction. It is further held that in absence of any document to show that the said travel company was the borrower, it cannot be said that the said travel company is necessary party to the dispute.

7. Accordingly, both the Courts below rejected the said argument of the petitioner and while rejecting it no perversity is committed by the both the Courts-below, I do not find any merit in the said submission of the learned counsel for the petitioner, accordingly it is rejected.

8. As far as the second submission of the learned counsel for the petitioner is concerned, the learned counsel for the

respondent No.1 has placed reliance on the judgment of the Supreme Court of India in the case of *Ram Kishun and others Vs. State of Uttar Pradesh and others*¹.

“10. There can be no dispute to the settled legal proposition of law that in view of the provisions of Section 128 of the Indian Contract Act, 1872 (hereinafter called “the Contract Act”), the liability of the guarantor/surety is co-extensive with that of the debtor. 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.”

9. As per above cited authority of the Hon’ble Supreme Court of India, it is a well settled law that a liability of guarantor is co-extensive with the borrower and therefore, on this ground also, I do not find any merit in the present writ petition. Accordingly, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]

1 (2012) 11 SCC 511