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2024:PHHC:033915-DB

**106 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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Date of Decision: February 23, 2024

Manmohan Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE AMARJOT BHATTI**

Present: Mr. Mansur Ali, Advocate for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

Ms. Madhu Dayal, Advocate for respondents No. 2 and 3 - PSIDC.

LISA GILL, J.

1. Prayer in this writ petition is for directing respondent No. 2 to release the petitioner as personal guarantor and declare the entire contract of guarantee alongwith Joint Guarantee dated 17.08.1998 (Annexure P6) to be invalid.

2. Brief facts, as pleaded in the writ petition and necessary for adjudication of the matter, are that respondent No. 4 is stated to be a company incorporated under the Companies Act, 1956 in April 1996. Term loan of Rs.1.98 crores and bridge loan of Rs. 50 lakhs against State subsidy was sanctioned on 04.06.1996 by respondent No. 2 in favour of respondent No. 4 for setting up a paddy processing unit. Term loan for the project was enhanced to

Rs. 2.50 crores on 24.02.1998. Copy of loan agreements dated 17.08.1998 are

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attached as Annexures P4 and P5. It is the case of petitioner that he is not the guarantor of loan accounts in terms of agreements (Annexures P4 and P5). It is personal guarantees of respondents No. 4 and 5, which were submitted in their individual capacity. After execution of loan agreements, a joint guarantee deed was executed for repayment of loans.

3. Learned counsel for petitioner submitted that this guarantee is not in accordance with contents of either sanction or loan agreements. Joint guarantee bears the signatures of petitioner whereas he is not a guarantor as per contents of loan agreements/sanction. Petitioner's signatures are claimed to have been obtained clandestinely on guarantee deed dated 17.08.1998 (Annexure P6) by respondent No. 2. Misrepresentation and concealment on the part of officials of respondent No. 2 while obtaining signatures of petitioner on guarantee document is alleged. Due to financial indiscipline on the part of borrower and default in repayment of loans, application under Section 32(G) of the State Financial Corporation Act, 1951 (for short – 'SFC Act') was filed by respondent – PSIDC for recovery of an amount of Rs.2.50 crores as principal amount and Rs.10,553.91 lakhs as outstanding interest alongwith future interest and other amounts as claimed in application (Annexure P7). It was submitted that petitioner approached respondent – PSIDC on numerous occasions for release of his personal guarantee but to no avail. Ultimately legal notice dated 15.09.2022 was served upon PSIDC. However, in a totally unjustified manner, respondent – PSIDC on 20.10.2022 (Annexure P10) claimed that assertions in legal notice are not tenable and in case, petitioner has any grievance the same can be settled by the court of law. It was vehemently argued that petitioner is a 96 years old man and is being subjected to mental torture and is being made to unnecessarily face

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action on the basis of an invalid contract of guarantee. Therefore, said contract of guarantee should be declared invalid and petitioner should be discharged from all liability. Recovery proceedings initiated against petitioner should be dropped by respondent No. 2 in terms of provisions of Sections 142 and 143 of the Indian Contract Act.

4. Though formal notice of motion was not issued in this writ petition, written statement on behalf of respondent – PSIDC was filed. Learned counsel for PSIDC has opposed the writ petition while submitting that petitioner is raising disputed question of fact in this writ petition. Furthermore, petitioner admits his signatures on the deed of guarantee dated 17.08.1998 by Promoters/Directors while alleging that his signatures have been obtained by PSIDC by fraud and misrepresentation. It was contended that there was no question of any official of PSIDC misleading the petitioner to append his signatures upon said deed of guarantee. It was submitted that request for financial credit by respondent No. 4 was accepted by PSIDC and loan facility, as described in the writ petition, was afforded. Initially, as per terms and conditions of sanction respondent No. 5 – Jagdeep Singh, Dr. Kuldeep Singh and Mr. Kultaj Singh were Directors of respondent No. 4 – Company and were required to provide personal guarantees in individual capacity for repayment of loan. It is in view thereof that these three names of Mr. Jagdeep Singh, Dr. Kuldeep Singh and Mr. Kultaj Singh find mention in clause 4.3 of term loan agreements.

5. It was pointed out by learned counsel for PSIDC that as per communication received on 10.08.1998 from respondent No. 4, petitioner was informed to have joined as Director w.e.f. 05.08.1998 as reflected in the decision taken in meeting of Board of Directors. It was further stated therein that

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petitioner would submit his personal guarantee in the place of outgoing Director - Dr. Kuldeep Singh as net worth of the outgoing Director - Dr. Kuldeep Singh was nearly the same as that of the petitioner. PSIDC on 11.08.1998 agreed to accept this request of the company. Petitioner was accepted as a Director of the Company. It is to be noted, at this stage, that it was brought to our notice on pointed query by Court that Dr. Kuldeep Singh was admittedly not a Director of respondent No. 4 – Company since 1998. PSIDC also accepted that petitioner would provide personal guarantee for due repayment of term loan of PSIDC. It is, in these circumstances, that petitioner in his guarantee as Director of respondent No. 4 signed the deed of guarantee dated 17.08.1998 (Annexure P6). It was further submitted that it was on account of inadvertent error that name of outgoing Director - Dr. Kuldeep Singh was removed from term loan and bridge loan agreements dated 17.08.1998 but this inadvertence cannot absolve the petitioner of his liability to repay public money in accordance with law. It is pointed out by learned counsel for respondents No. 2 and 3 that stamp paper on which guarantee deed has been typed out is dated 06.08.1998 and had been purchased by respondent – Company itself and the matter too was typed thereon through the said company. Averment that documents were got typed by respondent No. 2 – PSIDC is denied being incorrect. Therefore, non-mention of name of petitioner in loan agreements cannot be termed to be anything but an inadvertent mistake. It was, thus, prayed that this petition be dismissed.

6. Heard learned counsel for parties and have perused the file with able assistance of learned counsel.

7. Availing of financial facility by company – respondent No. 4 from respondent No. 2 is a matter of record as is the factum of financial indiscipline

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on the part of said company leading to initiation of proceedings under Section 32(G) of SFC Act. Case set up by petitioner is that his signatures were obtained by misstatement and misleading in a clandestine manner on the deed of guarantee dated 17.08.1998 by officials of PSIDC and that this is apparent from the fact that name of petitioner does not figure in the loan agreements dated 17.08.1998.

8. At this stage, it is to be noticed that respondent – PSIDC has placed on record communication from respondent – company received on 10.08.1998 (Annexure R1) regarding information of petitioner joining the company as Director and being liable to give personal guarantee for term loan for the project in question. Relevant portion of letter (Annexure R1) reads as under:-

“This is to inform you that Mr. Manmohan Singh has joined the Company as a director with 5th August 1998 vide decision of the meeting of Board of Directors held on the mentioned date.

Mr. Manmohan Singh replaces Sh. Kuldip Singh and would give personal Guarantee for the term loan for the project in question. The assets and liabilities of Mr. Manmohan Singh are same as compared to the outgoing Director. Copy of the comparison of both is being attached for your perusal.

I would request you to take note of the above mentioned as all other formalities for disbursement have been completed.”

9. Relevant noting dated 11.08.1998 of respondent No. 2 in this regard is attached as Annexure R2. Relevant portion of which reads as under:-

“As per the terms & conditions of sanction Sh.Jagdeep Singh, Dr.Kuldeep Singh and Sh.Kultaj Singh have to provide personal guarantee for due repayment of the loan. The company has vide its letter dated 10.8.1998 informed that they have inducted

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Sh. Manmohan Singh, as director on the Board of the company in place of Dr. Kuldeep Singh. Sh. Manmohan is MA in Economics and has worked as Technical Consultant in the Ministry of Commerce at New Delhi for 8 years, thereafter he joined PES and retired as PES-1 and is presently offering consultancy services to various industrial units. The net worth of Sh. Manmohan Singh is Rs.119.50 lacs and net worth of Sh.Kuldeep Singh is Rs.123.45 lacs. Thus, we may agree to the request of the company and accept Sh. Manmohan Singh as director on the Board of the company. He shall also provide personal guarantee for due repayment of the term loan of PSIDC.”

10. After acceptance of this proposal on 12.08.1998, guarantee deed dated 17.08.1998 is stated to have been executed whereon petitioner appended his signatures. Signatures on the said guarantee deed dated 17.08.1998 are not denied though it is submitted that guarantee deed (Annexure P6) is not in accordance with sanction of loan nor loan agreements and signatures of petitioner have been obtained by misrepresentation and concealment. Even in replication filed by petitioner to the written statement filed on behalf of respondent No. 2, it is not stated that petitioner has not appended his signatures on guarantee deed. Respondent – PSIDC claims present writ petition to be highly belated because cause of action, if any, arose to the petitioner on 17.08.1998 and in any case in February, 2021 when PSIDC in its application under Section 32(G) of SFC Act raised plea of mistake of petitioner’s name not being incorporated in loan agreements.

11. Be that as it may, it is inescapable that disputed questions of fact are involved for adjudication in this writ petition. Same cannot be subject to consideration and decision in the present proceedings. Reliance by learned

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counsel for petitioner on the judgment of Hon'ble the Supreme Court in **Rajasthan State Electricity Board versus Union of India and others 2008 (5) SCC 632** is of no avail as in the said matter questions of fact as raised therein were found to be elementary, which is not so in the present writ petition, which has been filed after initiation of proceedings under Section 32(G) of SFC Act by respondent – PSIDC.

12. Keeping in view the facts and circumstances as above, we do not find the present to be a fit case for exercise of jurisdiction under Article 226 of Constitution of India. Present are purely contractual matters and petitioner does have efficacious remedy(ies) for redressal of grievance(s) as raised by him in this writ petition.

13. Accordingly, present writ petition is dismissed with liberty to petitioner to avail remedy(ies) available to him in accordance with law. We deliberately refrain from expressing any opinion on the merits of matter lest there be prejudice to any of the parties.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

February 23, 2024
Rts

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