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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 44/2024**

MAHENDER SINGH

..... Petitioner

Through: Mr. Jasbir Singh Malik, Advocate
with Mr. Ganesh Chandra Pandey,
Advocate

versus

THE DELHI STATE CO-OPERATIVE BANK LTD. Respondent

Through: None

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Date of Decision: 3rd January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T (Oral)

CM APPL. No. 126/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. Accordingly, the application stands disposed of.

W.P.(C) 44/2024 & CM APPL. No. 125/2024 (Stay)

3. This writ petition filed under Article 226 of the Constitution of India impugns the order dated 06.10.2023 passed by Delhi Co-operative Tribunal, Govt. of NCT of Delhi ('Tribunal') in Appeal No. 163/2015/DCT titled as '**Sh. Mahender Singh v. Delhi State Co-operative Bank Ltd.**' ('Appeal'), whereby an appeal under Section 112 of The Delhi Co-operative Societies Act, 2003 ('DCS Act'), filed by the Petitioner herein was dismissed.



3.1. The said appeal was filed seeking set aside of the arbitral award dated 24.03.2012 ('impugned award'), passed by the Respondent No. 3 ('arbitrator') in Arb. Case No. 1344/AR/ARB/11-12 titled as '**The Delhi State Co-operative Bank Ltd. v. Sh. Sri Krishan & Ors.**' ('arbitral proceedings') on the ground that the Petitioner was not served upon with the notice in arbitral proceedings.

3.2. The facts of the case are that a loan-cum-hypothecation-cum-guarantee agreement dated 18.05.2002 ('loan agreement') was executed between Respondent No. 4 i.e., late Shri Sri Krishan ('borrower') and the Respondent No. 1, the bank, wherein the Respondent No. 4 availed a loan of Rs. 10,91,000/- ('the loan') from Respondent No. 1 for the purpose of financing of a bus (which was hypothecated with Respondent No. 1). The loan agreement was duly signed by the borrower, the authorised signatory of Respondent No. 1 and the guarantors/sureties (being the Petitioner and the Respondent No. 7).

3.3. In furtherance of the loan agreement, a personal surety deed dated 18.05.2002 ('personal surety deed') was executed by Petitioner and Respondent No. 7, wherein the said guarantors/sureties undertook to pay the loan due to bank, in case the borrower fails to pay the loan.

3.4. Since, the borrower failed to pay the outstanding loan, the Respondent No. 1 initiated claim proceedings under Section 70 of the DCS Act against the borrower, the Petitioner and the Respondent No. 7. Thereafter, the said proceedings were referred to the arbitrator for adjudication under Section 71 of the DCS Act. The arbitrator vide impugned award directed the borrower, the Petitioner and the Respondent No. 7 to pay jointly or severally to the Respondent No. 1 a sum of Rs. 11,50,041/-.



3.5. It is pertinent to note that it is the stand of the Petitioner that he sought a copy of the impugned award through notices/ RTIs and a legal notice dated 17.11.2015; from the Respondent No. 1, however, copy of the impugned award was not supplied to the Petitioner. As per the Petitioner, he received the photocopy of the award on 15.12.2015 and thereafter he filed an appeal before the Tribunal.

3.6. The Tribunal after perusing the arbitral proceedings has upheld the impugned award on merits and dismissed the appeal by its impugned order dated 06.10.2023.

4. Learned counsel for the Petitioner states that the Tribunal despite holding that the Petitioner was not duly served in the arbitral proceedings failed to set aside the impugned award. He states that the original arbitral record was not placed before the Tribunal in spite of the direction issued by the High Court vide order dated 16.11.2020. He states that the Tribunal has decided the appeal on the basis of the photocopy of the arbitral record. He states that a perusal of the personal surety deed executed by the Petitioner shows that his signatures were obtained on documents which contained blank spaces. He states that therefore, no liability can be foisted on the Petitioner herein on the basis of the said surety deed. He states that the Petitioner herein has paid an amount in excess of Rs.8.5 lakhs to Respondent No. 1 towards repayment of the loan; in addition to the fixed deposit of Rs.3.5 lakhs kept with Respondent No. 1; however, no adjustment for the said amounts has been accounted for by Respondent No. 1.



4.1. He states that the Petitioner believes that late Shri Sri Krishan, his legal representatives and Respondent No. 7 (the other surety) have also made payments towards the outstanding loan. He states that however, there is no clarity on record with respect to the said payments and therefore the Petitioner disputes that there is any further amount recoverable by the Respondent No. 1.

4.2. He states that the loan was availed for purchase of the bus, which was hypothecated with the Respondent No. 1; however, there is no clarity with respect to the sale and realisation of the proceeds of the said bus. He states that a substantial sum, which is in excess of the principal amount availed by the borrower, has been repaid to the Respondent No. 1; however, there is no clarity on the payments and adjustments.

4.3. He states that the legal representatives of the borrower i.e. late Shri Sri Krishan are in a good financial position to discharge the liability and, therefore, the proceedings initiated by Respondent No. 1 against the Petitioner are liable to be stayed at this stage.

5. This Court has considered the submissions of the learned counsel for the Petitioner and perused the record.

6. The primary submission of the Petitioner is that the Respondent No.1 has failed to account for the payments received from the borrower, his legal representatives, Respondent No. 7 (the other surety) and the Petitioner himself. The Petitioner also raises a grievance with respect to lack of information about the seizure and sale of the hypothecated vehicle. In our considered opinion the Tribunal in the impugned order has rightly observed that these submissions of the Petitioner are pertaining to execution, discharge and satisfaction of the impugned award. Accordingly, the



Petitioner herein will have sufficient opportunity to raise objections in this regard in the execution proceedings and there is no error in the finding of the Tribunal in this regard.

7. The Petitioner has not disputed before this Court that he is the brother of the borrower i.e. late Shri Sri Krishan and he resides in the same house property as the borrower. It is a matter of record that the borrower was duly served in the arbitral proceedings at the same address and participated in the said proceedings which culminated in the impugned award. Despite the contention of the Respondent No. 1 that Petitioner had due notice of the arbitral proceedings for all practical purposes and elected not to participate in the same, the Tribunal, however, granted benefit of procedural requirement to the Petitioner and examined his defence on merits and has returned a finding that the Petitioner has failed to disclose any substantial defence to the claims of Respondent No. 1. The Tribunal has returned a finding that in view of Section 128 of the Indian Contract Act, 1872 ('Act of 1872') the liability of the Petitioner as a surety is co-extensive with that of the principal borrower and, therefore, the Petitioner herein is liable to Respondent No.1.

8. The Petitioner has challenged the aforesaid finding of the Tribunal on the ground that the personal surety deed has blanks. This Court has perused the said surety deed and notes that the amount of loan borrowed as well as the rate of interest has been duly mentioned in the recital and clause 1 of the said deed. There is no dispute that the said deed (at page 1) has been duly signed by the Petitioner herein at three (3) places and more specifically against the blanks filled up by hand. A perusal of the surety deed therefore shows that the same was signed by the Petitioner herein for the entire



liability towards the loan availed by the borrower without any restriction on his liability. The Petitioner has also signed the loan agreement and is a party thereto. The co-extensive liability of the Petitioner herein as the guarantor/surety is duly detailed at clauses 6 (1) to (4) of the loan agreement. The Petitioner does not dispute the execution of the loan agreement and the personal surety bond. This Court is therefore of the considered opinion that there is no infirmity in the finding of the Tribunal that the Petitioner herein has failed to disclose any substantial defence to the claim of the Respondent No. 1, bank.

9. The last submission of the Petitioner was that the original record of the arbitral proceedings was not placed before the Tribunal and only the photocopy was placed before them. The Petitioner has however, been unable to point out the prejudice caused due to the non-production of the original record. The Tribunal has also not expressed any reservation about non-production of the original.

10. This Court also takes note of the fact that the Petitioner's counsel was not present to address final arguments before the Tribunal for three consecutive dates. Despite the absence, the Tribunal after perusing the record and the written arguments has decided the matter on merits.

11. This Court is of the considered opinion that the Petitioner has failed to point out any patent error in the order of the Tribunal, which would warrant interference by this Court in its writ jurisdiction. The Petitioner has instead argued the case on merits before us and sought a review of the evidence relied upon by the Tribunal while upholding the impugned award. It is trite law that this Court in its writ jurisdiction shall not review the evidence to



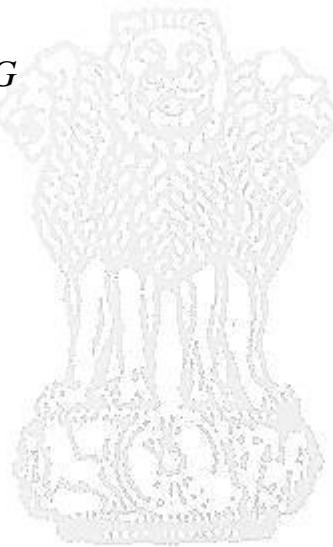
substitute the findings on merits the Tribunal. This Court therefore finds no merit in the writ petition and the same is dismissed.

12. The pending application also stands disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 03, 2024/mr/MG



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