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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.14165-2019 (O&M)
Date of decision: 13.08.2025

PUNJAB NATIONAL BANK

... PETITIONER

Versus

DEBT RECOVERY APPELLATE TRIBUNAL AND OTHERS

... RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. C.S. Pasricha, Advocate
for the petitioner.

Mr. Gunjan Rishi Advocate
for respondent No.2.

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SANJIV BERRY, J.

1. By way of instant writ petition under Article 226/227 of the Constitution of India, petitioner-Bank has sought issuance of writ of certeriori for quashing of the order dated 05.04.2019 (Annexure P-7) passed by the Debt Recovery Appellate Tribunal, New Delhi to the extent whereby the name of respondent No.2 has been deleted from the array of defendants in OA No. 3024 of 2016 filed by the petitioner-Bank therein.

2. Briefly stating, as per the contentions raised in the petition, the respondent No.3, a registered Society through its office bearers, respondent No.2 and one Parampal Singh Sidhu as authorized signatories had approached the petitioner-Bank for grant of loan for the said society, which

was accordingly sanctioned and the mortgage as well as documents were duly signed by the aforesaid respondent No.2 and Parampal Singh Sidhu, being office bearers and authorized signatories. Subsequently, the account was declared as NPA and notice under Section 13(2) of SARFAESI Act was issued, which was challanged by the respondent No.3-Society by moving SARFAESI application which was however dismissed. The petitioner-Bank then filed OA for recovery of the amount, in which the Society had been arrayed as defendant No.1, its Chairman Parampal Singh Sidhu as defendant No.2 and Parneet Bhardwaj as defendant No.3 with other defendants. During the pendency of the proceedings, before the Debt Recovery Tribunal Chandigarh, the respondent No.2 moved an application seeking deletion of his name from the array of the defendants which was dismissed by the Debt Recovery Tribunal, Chandigarh vide order dated 29.08.2018 (Annexure P-6). The appeal preferred by respondent No.2 was however allowed by the Debt Recovery Appellate Tribunal, New Delhi vide the impugned order dated 05.04.2019 (Annexure P-7) and the same has been assailed in the present petition.

3. It is the contention of the learned counsel for the petitioner that the respondent No.2 being the Vice Chairman of the respondent No.3-Society had duly executed all the relevant documents on behalf of the Society including the mortgage deed and being the highly placed bureaucrat at the relevant time had approached the petitioner-Bank for grant of the loan facility to the society alongwith its Chairman Parampal Singh Sidhu and in the process also executed various security documents for creation of equitable mortgage in favour of the petitioner Bank. He contends that although the

respondent No.2 has not executed any personal gurantee in any manner but being the office bearer of the Society who had signed the various documents including equitable mortgage in favour of the petitioner-Bank, he is necessary party. He contends that the DRAT, New Delhi vide the impugned order dated 05.04.2019(Annexure P-7) had wrongly deleted his name from the array of the parties and as such the impugned order is not sustainable in the eyes of law, hence liable to be set-aside.

4. *Per contra*, learned counsel for respondent No.2 has assailed these arguments by contending that at the relevant time, the respondent No.2 happened to be the office bearer of the respondent No.3, a registered Society, being its Vice Chairman and duly authorized on its behalf alongwith its Chairman Pritpal Singh Sidhu to sign and execute various documents in favour of the petitioner-Bank for the purpose of availing loan facility. He submits that even during the pendency of the Original Application a Miscellaneous Application No.816/2017 has been moved by the respondent No.2, wherein the learned counsel for the Bank submits that the Bank will have no objection if the name of the petitioner (respondent No.2) is deleted from array of the parties. He submits that the DRAT, Delhi has lawfully passed the impugned order dated 05.04.2019 (Annexure P-7) holding the respondent No.2 being not a necessary party. He submits that even no personal liability is there of respondent No.2 in the said original application which fact is even not disputed by the Bank that he had signed on the authorization of the Society being its Vice Chairman at the relevant time.

5. After considering the rival contentions and perusing the record, it is not disputed that the respondent No.3 a registered Society had availed

loan facility and for the purpose thereof, had authorized respondent No.2 being its Vice Chairman along with Parampal Singh Sidhu, Chairman of the Society to execute the relevant documents for the purpose of availing loan facility. The loan was sanctioned by the Petitioner-Bank and later the account was declared NPA and original application was filed by the petitioner Bank for the recovery of the outstanding amount before the DRT-I, Chandigarh, wherein respondent No.2 was impleaded as one of the defendant. He moved an application before the DRT, Chandigarh for deletion of his name from the array of the defendants which was rejected and against the same appeal was preferred before the DRAT, New Delhi and vide impugned order dated 05.04.2019 (Annexure P-7), learned DRAT, New Delhi, ordered deletion of his name from array of the defendants and aggrieved by the same the petitioner-Bank has preferred the instant petition.

6. From the perusal of the record, it emerges that the factum of the respondent No.2 having no liability in his personal capacity in the said transaction is not disputed. Admittedly, neither the loan in question was taken by respondent No.2 in his personal capacity nor had he signed or executed the relevant documents for that purpose in its personal capacity but as an authorized office bearer of the Society being its Vice Chairman at the relevant time. Even in the petition itself, it is specifically averred in para No.8 that it is a fact that no personal gurantee was executed by Sh. Parampal Singh Sidhu and Sh. Parneet Bhardwaj for the said loan facilities. It is also categorically averred in the petition itself that it is a fact that the loan was applied by the respondent No.2 being the office bearer of the Society and the loan documents were also executed in such capacity. Moreover, it is also not

disputed that during the proceedings of Miscellanious Application No. 816/2017, in Original Application before the DRT, the counsel representing the petitioner-Bank had suffered statement that the Bank will have no objection if the name of the respondent No.2 is deleted from the array of the parties. Although in the present petition learned counsel for the petitioner has claimed that such statement was made by the counsel for the Bank without any instructions, however, in view of the following factors, it does not hold any ground.

7. The perusal of the impugned order dated 05.04.2019 (Annexure P-7) passed by the DRAT, New Delhi would reveal that one of the prominent factor relied upon by it while passing the said order was the fact that it is not even case of the Bank either in OA or even during course of the appeal that the respondent No.2 (appellant therein) has mortgaged any of its personal asset to secure the repayment of loan taken by the Society of which he happened to be the Vice Chairman or he stood as a personal guarantor in any manner and the other factor being the aforesaid statement given by the counsel representing the petitioner-Bank to the fact that since the petitioner has not claimed any relief against him (respondent No.2) as such the Bank will have no objection if his name is deleted from the array of parties.

8. The perusal of the impugned order would also reveal that during course of proceedings of Original Application, a transfer application was moved by the respondent No.2 wherein also the stand taken by the petitioner Bank had been that no relief was being claimed against the applicant therein (i.e. the present respondent No.2, appellant before the DRAT) nor any decree

can be lawfully assessed against him and further the Bank have no objection if his name is removed from the array of parties. Based on such assertions, the transfer of application was disposed of, this fact was noticed by the DRAT in passing the impugned order by observing that the Bank cannot now turn around to say that such statements made by its counsel were not binding on the Bank. It was also observed therein that even if a decree is passed against the borrower/respondent No.3-Society the same cannot be executed against the respondent No.2.

9. It is worth mentioning that the perusal of impugned order would reveal that DRAT had passed a balanced well reasoned order. It is even observed therein that the signing of the documents by respondent No.2 in the loan transaction has not been in his personal capacity, as such he is not a necessary party in his individual capacity and, if the Bank feels the necessity of his presence to establish the execution of loan documents by him as an office bearer of the Society, he can always be called by the Bank by taking appropriate steps in that regard. In this manner, the interest of the petitioner Bank in securing the debt has also been appropriately safeguarded vide the impugned order.

10. In the present case, it is not disputed that the loan facility was availed by respondent No.3, a registered Society, from the petitioner Bank. The respondent No.2 being the Vice Chairman of the Society at the relevant time had been duly authorized alongwith its Chairman to apply for loan facility and executed the necessary documents on its behalf being the Vice Chairman and Chairman thereof. Admittedly, neither the loan facility was applied for by the respondent No.2 in his personal capacity nor any document

or personal gurantee was ever executed by the respondent No. 2 in his personal capacity. Hon'ble Supreme Court of India, in its judgment ***Kasturi vs. Iyyamperumal & Ors, 2005 (6) SCC 733,*** has observed that the persons stranger to the contract are neither necessary nor proper party. The relevant para of the judgment are reproduced here as under:-

> *"12. From the aforesaid discussion, it is pellucid that necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.*
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> *17. That apart, there is another principle which cannot also be forgotten. The appellant, who has filed the instant suit for specific performance of the contract for sale is dominus litus and cannot be forced to add parties against whom he does not want to fight unless it is a compulsion of the rule of law, as already discussed above. For the reasons aforesaid, we are therefore of the view that respondent Nos.1 and 4 to 11 are neither necessary parties nor proper parties and therefore they are not entitled to be added as party-defendants in the pending suit for specific performance of the contract for sale."*

11. Thus the minute perusal of the impugned order dated 05.04.2019 (Annexure P-7) would reveal that the same has been passed after lawful appreciation of the facts and circumstances of the case in the correct

perspective by observing that as the respondent No.2 had neither applied for loan nor executed any document or any personal gurantee in his personal capacity, coupled with the submissions made by the counsel representing the Bank at the relevant time in the transfer application as well as during proceedings of Original Application that Bank could have no objection if the name of respondent No.2 is deleted from the array of parties, passed the said order since the respondent No.2 had not availed the loan or executed the relevant documents in his personal capacity but in the capacity of office bearer of respondent No.3, a registered Society, the DRAT was justified in passing the impugned order in ordering the deletion of his name from the array of the parties being not a necessary party.

13. Therefore, from the above discussion, it is observed that the impugned order dated 05.04.2019 (Annexure P-7) has been passed by DRAT, New Delhi, in accordance with law by appreciating the facts and circumstances in the correct perspective, wherein no infirmity or illegality could be observed so as to call for any interference therein.

14 As a consequent to the above discussion, finding no merit in the the instant writ petition the same is hereby dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

(SANJIV BERRY)
JUDGE

(SHEEL NAGU)
CHIEF JUSTICE

Dated: 13.08.2025
Gyan

i) Whether speaking/reasoned? Yes/No
ii) Whether reportable? Yes/No