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

+ **W.P.(C) 2327/2022 & CM APPL. 6724/2022**

SUKHENDER KUMAR

.....Petitioner

Through: **Mr. Rajiv Gupta, Advocate.**

versus

C.A. THRIFT AND CREDIT SOCIETY & ORS.Respondents

Through: **Mr.Gulsher Ali, Advocate for respondent.**

Mr.Sameer Vashisht, Standing Counsel (Civil), GNCTD with Mr.Manashvey Jha and Ms. Harshita Nathrani, Advocates for respondent No.3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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23.01.2025

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 01.07.2021 passed by the Assistant Collector, Grade-I, Co-operative Societies, Govt. of NCT of Delhi.
2. A plain reading of the aforesaid order indicates that earlier the directions were issued to the DDO, LNJP Hospital, Jawahar Lal Nehru Marg to deduct a sum of ₹25,000/- from the salary and allowances of the petitioner in terms of the order dated 11.12.2020. The Assistant Collector directed that this amount be reduced to ₹15,000/- for the time being till the further communication.
3. The learned counsel appearing on behalf of the petitioner submits that



the orders had been passed for recovery of the amounts from his bank account as the principal borrower (respondent no.2) had defaulted in repayment of dues to respondent no. 1. He submits that the impugned order is arbitrary and unreasonable as disproportionately large amount had been recovered from his salary account instead from the salary account of the principal borrower (respondent no.2).

4. It appears that the award had been passed for the sum of ₹6,36,211/- and accordingly, an order attaching the petitioner's salary and allowances to the extent of aforesaid amount was issued. Against the said amount, a sum of ₹25,000/- per month was required to be recovered in terms of the order dated 11.12.2020.

5. The petitioner has not availed any remedy against the award and is, essentially, aggrieved by the execution proceedings. It is settled law that the liability of a principal borrower and a guarantor, are co-extensive and thus, there is no impediment in recovery of the debt from the guarantor in the first instance instead of the principal borrower. This issue is no longer *res integra*. We consider it relevant to refer to the following extract from the decision in ***Bank of Bihar Ltd. v. Dr. Damodar Prasad, 1968 SCC OnLine SC 280.***

“4. Before payment the surety has no right to dictate terms to the creditor and ask him to pursue his remedies against the principal in the first instance. As Lord Eldon observed in *Wright v. Simpson* [6 Ves Jun 714, 734 : 31 ER 1272, 1282] “But the surety is a guarantee; and it is his business to see whether the principal pays, and not that of the creditor”. In the absence of some special equity the surety has no right to restrain an action against him by the creditor on the ground that the principal is solvent or that the creditor may have relief against the principal in some other proceedings.



5. Likewise where the creditor has obtained a decree against the surety and the principal, the surety has no right to restrain execution against him until the creditor has exhausted his remedies against the principal. In *LachhmanJoharimal v. Bapu Khandu and Surety Tukaram Khandoji* [(1869) 4 Bom High Court Reports 242] the Judge of the Court of Small Causes, Ahmednagar, solicited the opinion of the Bombay High Court on the subject of the liability of sureties. The creditors having obtained decrees in two suits in the Court of Small Causes against the principals and sureties presented applications for the imprisonment of the sureties before levying execution against the principals. The Judge stated that the practice of his court had been to restrain a judgment-creditor from recovering from a surety until he had exhausted his remedy against the principal but in his view the surety should be liable to imprisonment while the principal was at large. Couch, C.J., and Melvill, J. agreed with this opinion and observed—

“The court is of opinion that a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt.”

6. It is now suggested that under Order 20 Rule 11(1) and Section 151 of the Code of Civil Procedure the Court passing the decree had the power to impose the condition that the judgment-creditor would not be at liberty to enforce the decree against the surety until the creditor has exhausted his remedies against the principal. Order 20 Rule 11(1) provides that “where and insofar as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable”. For making an order under Order 20 Rule 11(1) the court must give sufficient reasons. The direction postponing payment of the amount decreed must be clear and



specific. The injunction upon the creditor not to proceed against the surety until the creditor has exhausted his remedies against the principal is of the vaguest character. It is not stated how and when the creditor would exhaust his remedies against the principal. Is the creditor to ask for imprisonment of the principal? Is he bound to discover at his peril all the properties of the principal and sell them; and if he cannot, does he lose his remedy against the surety? Has he to file an insolvency petition against the principal? The trial court gave no reasons for this extraordinary direction. The Court rejected the prayer of the principal debtor for payment of the decretal amount in instalments as there was no evidence to show that he could not pay the decretal amount in one lump sum. It is, therefore, said that the principal was solvent. But the solvency of the principal is not a sufficient ground for restraining execution of the decree against the surety. It is the duty of the surety to pay the decretal amount. On such payment he will be subrogated to the rights of the creditor under Section 140 of the Indian Contract Act, and he may then recover the amount from the principal. The very object of the guarantee is defeated if the creditor is asked to postpone his remedies against the surety. In the present case the creditor is a banking company. A guarantee is a collateral security usually taken by a banker. The security will become useless if his rights against the surety can be so easily cut down. The impugned direction cannot be justified under Order 20 Rule 11(1). Assuring that apart from Order 20 Rule 11(1) the Court had the inherent power under Section 151 to direct postponement of execution of the decree, the ends of justice did not require such postponement.”

6. In the case of *Union Bank Of India vs. Manku Narayana: (1987) 2 SCC 335*, the Supreme Court took a contrary view and held that the creditor was required to exhaust his remedies against the principal debtor before proceedings against the surety. This decision was subsequently overruled by the Supreme Court in *State Bank of India vs. M/s Indexport Registered and*



Ors.: (1992) 3 SCC 159.

7. In view of the above, the petitioner's contention that it is impermissible to recover a disproportionately higher amount from his account than from the account of the principal borrower, is unmerited.

8. In view of the above, the petition is accordingly dismissed.

VIBHU BAKHRU, J.

ANOOP KUMAR MENDIRATTA, J.

JANUARY 23, 2025/v

Click here to check corrigendum, if any