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

Date of decision: 13th May, 2025

\+ **W.P.(C) 6261/2025**

YOGESHWAR DAYAL SURETY OF PARSHANT KUMAR .....Petitioner

Through: Mr. Mukesh Gupta, Mr. Mayank Ahuja, Mr. Varsha Singh, Advocates.

versus

THE VISHNU URBAN COOPERATIVE THRIFT CREDIT SOCIETY LTD AND ORS. .....Respondents

Through: Ms. Shreya Bhardwaj, Advocate for R-2.

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\+ **W.P.(C) 6293/2025**

YOGESHWAR DAYAL SURETY OF MEENA MALHOTRA .....Petitioner

Through: Mr. Mukesh Gupta, Mr. Mayank Ahuja, Mr. Varsha Singh, Advocates.

versus

THE VISHNU URBAN COOPERATIVE THRIFT CREDIT SOCIETY LTD. & ANR. .....Respondents

Through: Ms. Shreya Bhardwaj, Advocate for R-2.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 28636/2025 (exemption) in W.P.(C) 6261/2025
CM APPL. 28678/2025 (exemption) in W.P.(C) 6293/2025

2. Allowed, subject to all just exceptions. The applications stand disposed of.

W.P.(C) 6261/2025 & CM APPL. 28635/2025
W.P.(C) 6293/2025 & CM APPL. 28677/2025

3. These are two petitions filed by the Petitioner under Articles 226 and Article 227 of the Constitution of India challenging the orders passed by the Delhi Cooperative Tribunal *(hereinafter, 'DCT')* dated 11th April, 2025 in Appeal No. 126/2024 and Appeal No. 127/2024.

4. The short background giving rise to the present petitions is that the Petitioner had stood surety in respect of loans of two persons namely Mr. Prashant Kumar and Mrs. Meena Malhotra, who are husband and wife.

5. The above named persons, Mr. Prashant Kumar and Mrs. Meena Malhotra *(hereinafter, 'the borrowers')* had obtained loans from The Vishnu Urban Cooperative Thrift & Credit Society Ltd. - Respondent No. 1 for a sum of Rs. 5,00,000/- and Rs. 4,50,000/-, respectively.

6. The said borrowers are now not traceable and the Petitioner, who had stood surety to their loans has been proceeded against before the DCT. During the pendency of the proceedings before the DCT, the Petitioner had moved an application for stay which was dismissed vide the impugned order. The operative portion of the impugned order passed in both appeals being Appeal No. 126/2024 and Appeal No. 127/2024 read as under:

Applications for Stay

> *Sh.Mukesh Gupta, counsel for the appellant submits that the appellant, who is a school teacher is being harassed, in as much as his salary is sought to be attached; whereas, there are other co-sureties, who are*

available. It is also argued that at the time of disbursal of the loan, Principal Borrower had submitted post-dated cheques and no steps have been taken by the Society to seek encashment, thereof. It is also argued that the Principal Borrowers had taken loan from several other societies, as well; this was to the knowledge of respondent no.-1/ society and despite that Principal Borrowers was advanced loan by the Society. It is further submitted that one Rajveer Sharma was loan Manager of respondent no.-1/ Society, as well, as of the other Societies from one of which, the Principal Borrowers had taken loan.

Sh.Suresh Kumar Aggarwal, counsel for the respondent no.-1/ Society has strongly contested the application for stay. It is submitted that no post-dated cheques were taken from the Principal Borrowers. It is next argued that appellant, as well, as all other co-sureties have equal responsibility to pay the amount due for failure of Principal Borrower to make good the loan amount. The liability is joint & several and co-extensive, as per Sec.-128 of the Indian Contract Act. It is, therefore, argued that the respondent/ Society is within its right to seek recovery from the appellant. Sh.Aggarwal submits that there was no mechanism available with the Society to verify, if the Principal Borrower had taken loan from other Societies also. As regards Sh.Rajveer Sharma, it is submitted that he was an employee of the respondent no.-1/ Society, who had no role in sanctioning of the loan. It is further submitted that Principal Borrowers were made members on the recommendation of the appellant, who was an old member of the Society. It was on his assertion, that the Principal Borrowers were gainfully employed and had the capacity to repay the loan, that they were made members and were extended the loan. It is further submitted that Principal Borrowers in these two appeals are a couple.

Arguments on the application for stay have also *been heard.*

<u>It is the case of the respondent no.-1/ Society that a recovery of more than Rs.15 Lakhs (collectively in both the appeals) is due from the Principal Borrowers, who are husband & wife. Admittedly Principal Borrowers are not traceable. Appellant has also failed to serve them in these appeals. Appellant being one of the sureties and the introducer at whose instance, the Principal Borrowers were inducted as a members and advanced loans, can not escape his liability now; when Principal Borrowers have absconded and appellant is also unable to produce them or to furnish their latest particulars. A study of the loan bonds in conjunction with Sec.-128 of the Indian Contract Act makes the liability of appellant and Principal Borrowers coextensive. Respondent no.-1/ Society is within its right to seek recovery from the appellant or any other surety, who are contractually bound to re-pay the amount, their liability being joint & several. It goes without saying that appellant shall have a right to recover the amount from the Principal Borrowers in terms of Sec.-145 of the Indian Contract Act.</u>

<u>Thus, finding no merits in the application for stay, the same is dismissed.</u>

Now, to come up on the date already fixed i.e. on 14.05.2025 for further proceedings.

7. The submission of ld. Counsel for the Petitioner is that apart from the Petitioner, there were three other persons who stood surety for the same loan obtained by the borrowers. Such persons are also parties to the proceedings before the DCT.

8. It is further submitted that the rejection of the stay application may result in attachment of the salary account of the Petitioner who is a teacher in a government school. Such attachment of his bank account could severely

impact his livelihood. Hence, the present petition.

9. Advance copy of these petitions has been served upon the counsels appearing for the Respondents in the DCT on their respective mobile number and email address. However, there is no appearance.

10. The facts in this case are admitted i.e., that the Petitioner had stood surety for the loans taken by the borrowers. There were other sureties as well for the said loans. The stay application having been dismissed vide the impugned order, the salary account of the Petitioner is sought to be attached as per a notice received by the Petitioner on 09th May, 2025 from the Principal of the government school where he works.

11. Considering that the main appeals itself are pending for hearing before the DCT, the Petitioner is directed to deposit a sum of Rs.1,00,000/- in each of the appeals being Appeal No. 126/2024 and Appeal No. 127/2024 by 10th June, 2025, subject to which, the attachment of the salary account of the Petitioner shall not be proceeded with.

12. This order has been passed in this case in light of the fact that the Petitioner and his family's livelihood would also be dependant on the salary being earned by him.

13. In addition, the DCT shall also take steps to ensure the attendance of the borrowers who appear to be simply avoiding the Court process. In order to ensure attendance, the DCT is also free to exercise its powers as a civil court, including by issuance of warrants.

14. It is further clarified that the observations made by this Court in the present petitions shall not impact the outcome of the appeals pending before the DCT.

15. The petitions are disposed of in these terms. Pending applications, if

any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 13, 2025
v/ss