



2025:DHC:2735-DB



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

% Judgment delivered on: 21.04.2025

+ **W.P.(C) 11524/2019 CM APPL. 47332/2019**
SUNIL GUPTA & ANRPetitioners

versus

PUNJAB NATIONAL BANK & ORSRespondents

+ **W.P.(C) 11525/2019 CM APPL. 47334/2019 CM APPL. 47335/2019**
SUNIL GUPTA & ANRPetitioners

versus

PUNJAB NATIONAL BANK & ORSRespondents

+ **W.P.(C) 11526/2019 CM APPL. 47337/2019 CM APPL. 47338/2019**
SUNIL GUPTA & ANRPetitioners

versus

PUNJAB NATIONAL BANK & ORSRespondents

+ **W.P.(C) 11527/2019 CM APPL. 47348/2019**
SHALINI GUPTAPetitioner

versus

PUNJAB NATIONAL BANK & ANRRespondents



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Advocates who appeared in this case:

For the Petitioners : Mr B B Sawhney, Sr Advocate with Mr Tarique Siddiqui, Mr Aamir Zaidi, Mr Harsh Priya, Mr Abhishek K Tanwar, Mr Mohd Bilal, Mr Fajallu Rehman and Ms Lakshmi, Advocates for the Petitioners.

For the Respondents : Mr Ajay Shankar and Mr Manikant Shahi, Advocates for Punjab National Bank.
Mr Girish Verma, Advocate for R3 to R10.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGEMENT

TEJAS KARIA, J

INTRODUCTION

1. The Petitioners have challenged the common order dated 16.09.2019 passed by the Debts Recovery Appellate Tribunal, Delhi ('**DRAT**') in Appeal No.136/2017, Appeal No.133/2017, Appeal No.134/2017 and Appeal No.135/2017 filed by Respondent No.1/Punjab National Bank ('**PNB**') holding that PNB was a genuine mortgagee of the two properties in question and the same were not vitiated due to any kind of fraud having been played by PNB officials ('**impugned order**'). The DRAT further held that the bank had rightly exercised its rights as a secured creditor by selling the property No. 422-426, Katra Medgran, Khari Baoli, Delhi - 110006 ad



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measuring 200.66 square meters (**‘Khari Baoli Property’**) belonging to the Petitioners in W.P.(C) 11524/2019, W.P.(C) 11525/2019, W.P.(C) 11526/2019 and also has the right as a secured creditor in respect of property No. F-30A, Gali No.9, Subhash Chowk, Laxmi Nagar, Delhi- 110 092 (**‘Laxmi Nagar Property’**) belonging to the Petitioner in W.P.(C) 11527/2019 (Both Khari Baoli Property and Laxmi Nagar Property are hereinafter collectively referred to as **‘the Properties’**).

2. By impugned order, the learned DRAT has set aside a common order dated 25.01.2017 passed by the Debts Recovery Tribunal-III, Delhi (**‘DRT’**) in two original Applications being O.A No. 612 of 2015 in the matter of *Punjab National Bank v. M/s Patwa Madan Lal Ashok Kumar and Others* and O.A No. 613 of 2015 in the matter of *Punjab National Bank v. M/s. Patwa Synthetic Yarns Pvt. Ltd. and Others* (**‘OA’**) under Section 19 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993, and two Securitization Applications being S.A. No. 215/2015 in the matter of *Shalini Gupta v. Punjab National Bank & Another* and S.A. No. 335/2015 in the matter of *Sunil Gupta and Another v. Punjab National Bank and Others* (**‘SA’**) under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**‘SARFAESI Act’**).

FACTUAL CONTEXT IN W.P.(C) 11524/2019, W.P.(C) 11525/2019, W.P.(C) 11526/2019

3. The Petitioners have contended that they came in contact with Respondent No. 2, who was said to be blessed with divine powers.



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Respondent No. 2 advised the Petitioners to sell off their scattered investments in real estate and consolidate all funds together and make a single large investment in the form of a large space commercial property.

4. Acting upon the advice of Respondent No. 2, the Petitioners consolidated their funds and purchased the Khari Baoli Property through registered sale deed dated 02.11.2010 for a total sale consideration of ₹1,10,00,000/-.

5. In May 2011, Respondent No.2 advised the Petitioners to avail an overdraft limit against mortgage of the Khari Baoli Property so that the Petitioners can participate in auction sales offered by PNB.

6. In July 2011, on the advice of Respondent No.2, the Petitioners approached PNB with the original papers of the Khari Baoli Property, where the officials of PNB took the original papers of the Khari Baoli Property into their custody and asked the Petitioners to sign a set of documents, which were unfilled and had blanks in the same.

7. It is the Petitioners' case that they had signed these documents in good faith as they had high regard for Respondent No.2 under whose assurance, they were under the impression that the said documents were for seeking empanelment in PNB's list of auction purchasers.

8. In October 2011, the Petitioners enquired from Respondent No. 2 about the progress of empanelment with PNB, however, Respondent No.2 assured that the process was in motion and the bank formalities would take time in completion.

9. In May 2012, following the instructions of Respondent No.2, the Petitioners gave a letter received from PNB without opening it to



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Respondent No. 2, who confirmed to the Petitioners that they had been empaneled with PNB and took the Petitioners to Sadar Bazar branch of PNB for completing the formalities and got the Petitioners to sign on various blank papers before the officials of PNB. On 18.10.2012, when the Petitioners did not get any information regarding intended auctions, the Petitioners requested Respondent No. 2 to obtain return of the documents of the Khari Baoli Property. Respondent No. 2 handed over two cheques of ₹2,50,00,000/- each, which the Petitioners did not encash as they wanted the documents of the property back.

10. In May 2013, Petitioner No.1 visited the Mall Road branch of PNB to enquire about the status of empanelment, but the officials of PNB declined to entertain him. In July 2013, Petitioner No.1 again visited the Mall Road branch of PNB and had heated arguments with Mr. B. R. Chaudhary, Assistant General Manager ('AGM') of Mall Road branch of PNB, who informed the Petitioners that the Khari Baoli Property stood as a collateral security for cash credit facility of Respondent Nos. 3 and 4.

11. Between August 2013 and March 2014, the Petitioners frequently visited the office of Respondent No. 2, where Respondent Nos. 5 and 6 used to be present. Respondent No. 2 also assured the Petitioners that he would get the documents of the Khari Baoli Property released from PNB. Between April 2014 to October 2014, Respondent No. 2 handed over to the Petitioners, the letters dated 21.03.2014, 01.07.2014 and 19.09.2014 signed by the directors/partners of Respondent Nos. 3 and 4 addressed to PNB providing a roadmap for reducing the cash credit limit and consequently releasing the Khari Baoli Property.



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12. Subsequently, PNB released three (3) properties belonging to Respondent Nos. 5 and 8 and their mother Smt. Premwati from mortgage upon deposit of only about fifty per cent of their realizable value as assessed by the valuer of PNB. However, there was no notice or intimation given to the Petitioners.

13. On 10.04.2015, Respondent No.2 handed over two letters issued by PNB dated 28.03.2015 and 07.04.2015 to Respondent Nos. 3 and 4 respectively under Section 13(2) of the SARFAESI Act.

14. On 08.09.2015, PNB filed OA No.612/2015 titled as '*Punjab National Bank vs. Patwa Madan Lal Ashok Kumar & Ors.*' and OA No.613/2015 titled '*Punjab National Bank vs. Patwa Synthetic Yarns Pvt. Ltd. & Ors.*' in the Ld. DRT. On 07.10.2015, whereas the Petitioners filed SA No.355/2015 titled '*Sunil Gupta & Anr. vs. Punjab National Bank*' under Section 17(1) of the SARFAESI Act in the Ld. DRT.

15. On 19.10.2015, the Petitioners filed an FIR against Respondent Nos. 2 to 7 bearing FIR No. 281/2015 under Sections 420, 406 & 506 of the Indian Penal Code, 1860 ('**IPC**') at Lahori Gate Police Station, Delhi.

16. On 23.10.2015, the learned DRT directed that PNB may go ahead with the auction of the Khari Baoli Property subject to outcome of S.A. No. 335/2015. On the same day, Petitioners No.1 also approached PNB with a valuation report of the said property showing the market value of ₹3.56 crores and realizable value as ₹2.85 crores.

17. On 26.10.2015, Petitioner No.1 after arranging the funds from his friends and relatives, wrote a letter to PNB stating that he was ready to offer ₹3.56 crores for release of the Khari Baoli Property and gave a cheque of



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₹25,00,000/- as token payment which was encashed by PNB. Petitioner No.1 also handed over a cheque of ₹10,00,000/- on 27.10.2015. On the same date, the AGM of Mall Road branch of PNB sent a letter forwarding the offer of the Petitioners to the Circle Head, PNB. In pursuance of the offer, PNB withdrew the notice of e-auction and the same was published in newspaper on 27.10.2015.

18. On 02.11.2015, the Petitioners received letter from Deputy Circle Head of PNB stating that the offer of the Petitioners was not found acceptable and PNB issued e-auction notice of the Khari Baoli Property to be held on 09.12.2015, when it was auctioned for ₹5,00,20,000/- and was purchased by DFS Agri Foods Pvt. Ltd. as the auction purchaser.

19. On 11.12.2015, agreement to sell was executed between PNB and auction purchaser.

20. The Petitioners filed an impleadment application before the learned DRT to implead auction purchaser and seeking to maintain status quo in respect of the Khari Baoli Property. On 18.03.2016, the learned DRT passed an order in SA No.335/2015 directing to maintain status quo in respect of the Khari Baoli Property.

21. On 25.01.2017, the learned DRT pronounced a common order whereby it decided SA No.215/2015, SA No.335/2015, OA No.612/2015 and OA No.613/2015 declaring that the mortgage of the Properties of the Petitioners was obtained by fraudulent means, consequently rendering it null and void and directed PNB to return the amount received from auction purchaser along with 9% simple interest till realization.



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22. Being aggrieved by the common order dated 25.01.2017 passed by the learned DRT, PNB filed Appeal No.133/2017, Appeal No.134/2017 and Appeal No.135/2017 before the learned DRAT. The Petitioners also filed Appeal No.43/2018 before the learned DRAT challenging the common order of the learned DRT to the extent it was held that the interest in title of the auction purchaser had to be protected. During the course of the proceedings before the learned DRAT, the Petitioners filed a copy of the chargesheet filed by the police in FIR No.281/2015 in the Court of Metropolitan Magistrate, Tis Hazari Court, Delhi.

23. On 16.09.2019, the learned DRAT allowed the Appeals of PNB and passed the impugned order, wherein the learned DRAT held that the findings of the learned DRT as to the validity of the mortgage were unsustainable. Accordingly, vide order dated 24.09.2019, the learned DRAT dismissed the Appeal No. 43 /2018 of the Petitioners as having become infructuous.

FACTUAL CONTEXT IN W.P.(C) 11527/2019

24. The Petitioner being in dire need of money, got the sale deed executed in her favour from her mother-in-law for the Laxmi Nagar property for the purpose of obtaining loan from the financial institutions in 2007.

25. In November 2010, the Petitioner and her husband were introduced to Respondent No.2 by Mr. Sunil Gupta, who was a friend of Petitioner's husband. Mr. Sunil Gupta informed her husband that Respondent No. 2 was blessed with divine powers and he can solve the problems and sufferings of people.



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26. Between December 2010 and August 2011, Respondent No. 2 introduced the Petitioner and her husband to the purported bank officials, MCD officials, and Respondent No. 2 also took the Petitioner and her husband to various banks wherein the bank officials were asked to help the Petitioner and her husband in seeking loan against the mortgage of Laxmi Nagar Property of the Petitioner. On 29.09.2011, Respondent No. 2 took the Petitioner and her husband to Sadar Bazar branch of PNB, who carried the original documents of the Laxmi Nagar Property with them. The officials of PNB took the original documents and made the Petitioner sign a set of documents, which were unfilled and had blanks at various places. The Petitioner signed the documents in good faith and respect towards Respondent No. 2 with the understanding, assurance and being under the impression that the papers are for completing the formality for availing loan facility.

27. In June 2012, the Petitioner received a letter from PNB and without opening the same, as instructed by Respondent No.2, the said letter was handed over to Mr. Sunil Gupta, who passed it to Respondent No. 2. Respondent No.2 confirmed that the Petitioner's loan was approved and on 18.06.2012, the Petitioner and her husband were taken to Sadar Bazar branch of PNB by Respondent No.2 for completing the formalities and the officials of PNB got the Petitioner to sign on various blank papers. In May 2013, the Petitioner again received a letter from PNB, and the same was again handed over to Mr. Sunil Gupta, without opening the same, who in turn passed the said letter to Respondent No. 2. On 30.05.2013, Respondent



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No. 2 took the Petitioner to Sadar Bazar branch of PNB for the third time and again got the Petitioner to sign various blank papers.

28. Between October 2013 to March 2015, the Petitioner regularly followed up with Respondent No. 2, who assured her that the bank formalities and procedure often take time and that he would get the loan granted in favour of the Petitioner. On 10.04.2015, Respondent No.2 blurted out in anger that the Laxmi Nagar Property was mortgaged against cash credit limit availed by M/s. S. R. Trader, which was a sole proprietorship of Respondent No. 2. On 21.04.2015, PNB issued and pasted possession letter at the entrance of the Laxmi Nagar Property and the same was also published in newspaper on 23.04.2015. Thereafter, Mr. Rajeev Gupta, the Petitioner's husband, received certain documents from Respondent No. 2, which revealed that PNB had issued notice dated 11.02.2015 under Section 13(2) of the SARFAESI Act to M/s S.R. Traders. On 11.05.2015, Petitioner filed a criminal complaint against Respondent No. 2 and the officials of PNB at Police Station - Shakarpur.

29. On 19.05.2015, the Petitioner filed a Securitization Application being S.A. No. 215/2015 before the learned DRT which got connected with S.A. No.355/2015 filed by Mr. Sunil Gupta against PNB and O.A. No.612/2015 filed by PNB against Patwa Madan Lal Ashok Kumar and O.A. No.613/2015 filed by PNB against Patwa Synthetic Yawns Pvt. Ltd.

30. On 04.11.2015, the Petitioner lodged another complaint in Police Station - Shakarpur, Delhi and an FIR was registered against Respondent No. 2.



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31. On 25.01.2017, DRT pronounced a common order whereby it decided SA No.215/2015, SA No.335/2015, OA No.612/2015 and OA No.613/2015 declaring that the mortgage of the property of the Petitioner was obtained by fraudulent means, consequently rendering it null and void and directed PNB to return the amount received from auction purchaser along with 9% simple interest till realization.

32. Being aggrieved by the common order dated 25.01.2017 passed by the DRT, PNB filed Appeal before the learned DRAT being Appeal No. 136/2017. During the course of the proceedings before the learned DRAT, the Petitioner filed a copy of the chargesheet filed by the police in FIR No. 3049/2015 in the Court of Metropolitan Magistrate, Karkardooma Court, Delhi.

33. On 14.05.2018, the Petitioner received letter from Recovery Officer-I of DRT informing that O.A. No. 368 / 2016 titled '*Punjab National Bank v. M/s. S. R. Traders & Ors.*' before the learned DRT was decided.

34. On 16.09.2019, the learned DRAT allowed the Appeal of PNB and passed the impugned order wherein the learned DRAT held that the findings of learned DRT as to the validity of the mortgage were unsustainable.

SUBMISSIONS OF THE PETITIONERS:

35. The Petitioners submitted that as per the provisions of Sections 16, 17, 18, 19A, 142 & 143 of the Indian Contract Act, 1872 ('**Contract Act**') any guarantee obtained by misrepresentation or concealment is invalid. It



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was further submitted that Sections 139 and 141 of the Contract Act provide for discharge of surety and sureties' right to the benefit of creditors security.

36. Petitioners submitted that the impugned order did not consider the documents filed by the Petitioners before the Learned DRT and the chargesheet, along with the documents annexed to the same filed by the police. The Petitioners submitted that the learned DRAT failed to consider Sections 139, 141, 142 and 143 of the Contract Act, which had direct relevance to the facts and circumstances of the present case. It was submitted that the fact that three (3) properties of Respondent Nos. 5 and 8 and their mother, Smt. Premwati were released by PNB between April 2014 to October 2014 upon deposit of only about fifty per cent of realizable value as assessed by the valuers of PNB clearly pointed to complicity and collusion on the part of PNB through its officials with Respondent Nos. 2 to 8. The Petitioners have relied upon the cases of *Pradeep Kumar v. Postmaster General* (2022) 6 SCC 351 and *State Bank of India v. Shyama Devi* (1978) 3 SCC 399 to submit that the PNB would be vicariously liable for the fraudulent acts of its employees committed during the course of their employment.

37. The Petitioners relied upon the case of *Amrit Lal Goverdhan Lalan vs. State Bank of Travancore* 1968 SCC OnLine SC 246 in support of its submission that a portion of security parted with by the creditor without the surety's consent would discharge the surety to the extent of the value of the security. The Petitioners have also relied upon the case of *State of Madhya Pradesh vs. Kaluram* 1966 SCC OnLine SC 242 to submit that the loss of security due to failure or inaction to enforce charge by the creditor over the



security would discharge the guarantor. Relying upon the cases of *State Bank of Saurashtra vs. Chhitranjan Rangnath Raja* (1980) 4 SCC 516 and *P Jankiram Chetty vs. Punjab National Bank & Ors.* 1967 SCC OnLine Kar 83, the Petitioners have submitted that Section 141 of the Contract Act provides that the surety would be discharged to the extent of the security offered by principal debtor, if the creditor loses or without the consent of the surety, parts with such security.

38. The Petitioners submitted that when the mortgage was bad in law being vitiated by fraud, the logical and legal corollary would have been to quash the auction under the SARFAESI Act as bad in law. The Petitioners submitted that Respondent No.11 cannot claim to be a *bona fide* purchaser for value without notice as the auction was held subject to the outcome of the S.A. and there was a nexus between Respondent No.11 and Respondent No.2.

39. The Petitioners submitted that being a sole appellate forum, it was incumbent upon the learned DRAT to reappraise evidence / materials on record, which was not even referred to, let alone considered by the learned DRAT. The Petitioners have relied upon the decisions in the case of *Madhukar & Ors. vs. Sangram & Ors.* (2011) 4 SCC 756 to submit that the first appellate court is duty bound to discuss documentary and oral evidence as also the grounds on which the trial court rendered its decision.

40. In view of the same, the Petitioners have sought setting aside of the impugned common order dated 16.09.2019 in Appeal Nos. 113/2017, 134/2017, 135/2017 and 136/2017 and the consequent impugned order dated 24.09.2019 in Appeal No.43/2018.



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SUBMISSIONS OF PNB

41. PNB has submitted that the present Petitions filed by the Petitioners are not maintainable in view of the alternative remedy under Section 17 of the SARFAESI Act, particularly when such alternative remedy had already been availed by the Petitioners. PNB submitted that the issues of fact cannot be adjudicated in the writ jurisdiction by this Court. It was further submitted that the auction proceedings had attained finality and the auction purchaser was declared as the successful highest bidder, as PNB had confirmed the sale of the Khari Baoli Property and the sale certificate was issued on 23.12.2015. PNB submitted that the Petitioners had signed the agreement of guarantee and deed of mortgage as guarantor and mortgagor making themselves jointly and severally liable to pay the loan amount due to PNB. The Petitioners have already started the proceedings under Section 17 of the SARFAESI Act and criminal proceedings against Respondent Nos.2 to 10 alleging forgery with respect to creation of mortgage. However, the Petitioners have never denied the creation of mortgage, deposit of title deeds, execution of agreement of guarantee and execution of letter of continuity by visiting the premises of PNB. It was also submitted that the FIR was filed only after receiving the notice under Section 13(2) of the SARFAESI Act. The learned DRT had allowed the PNB to auction the property subject to the outcome of SA and had also permitted the Petitioners to participate in the auction and match the bid. However, the Petitioners had chosen not to participate in the auction or make any bid. Admittedly, the Petitioners were guarantors of original borrowers, and the properties were



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mortgaged with PNB by deposit of title deeds and the Petitioners never agitated or filed any complaint before PNB that the mortgage was created by playing fraud upon them. The Petitioners started making allegations of fraud only after receiving the auction notice.

42. It was submitted that a bare perusal of the Petitions would show that allegation of fraud with respect to the mortgage of the property was only against Respondent No. 2 and no allegation was made against any official of PNB. The learned DRT had failed to consider the admission of creation of mortgage by deposit of title deeds while discharging the Petitioners. The learned DRAT has rightly allowed the appeals by way of the impugned order challenged in the present writ petitions. The allegations of fraud were illusory and the present petitions, being without any merit, are liable to be dismissed.

43. PNB has relied upon the decision in the case of ***Canara Bank vs. P. Selathal & Ors.* (2020) 13 SCC 143** passed by Hon'ble Supreme Court of India in support of his submissions that having signed the mortgage, the guarantor being a co-obligant, will be jointly and severally liable to pay the loan amount due to the creditor.

ANALYSIS AND REASONS

44. We have heard the learned counsels for the parties in all the four Petitions. Admittedly, the Petitioners have created mortgage of the properties in favour of PNB and also stood as personal guarantors by executing the guarantee deed. The Petitioners also executed letter of continuity and agreement of guarantees, which would show that the Petitioners were aware



about the creation of mortgage and personal guarantees in favour of PNB. It is also a matter of record that after issuance of notice under Section 13(2) and Section 13(4) of the SARFAESI Act, PNB took physical possession of the Khari Baoli Property, which has been sold in public auction to Respondent No. 11, who was declared as the highest bidder in respect of that property. The sale has already been confirmed by executing a sale agreement and the sale certificate had been issued in favour of auction purchaser.

45. The Ld. DRAT has considered the documentary and oral evidence submitted by the parties before the learned DRT. The analysis of the evidence clearly shows that there was sufficient evidence to establish that the Petitioners were aware of the creation of the mortgage of the Properties in favour of PNB as the documents placed on record and the conduct of the Petitioners demonstrated extensive dealing between the Petitioners and PNB. The fact that the Petitioners arranged for the funds and made an offer to PNB of payment of ₹3.56 crores for release of the Khari Baoli Property, clearly shows that Petitioners were aware about the creation of mortgage.

46. Although the Ld. DRT has concluded that the release of properties by PNB without notice to the guarantors, which deprived the Petitioners of the valuable right of subrogation, was done fraudulently by PNB and the principal borrower, the same is not factually accurate.

47. Sections 139 and 141 of the Contract Act provides as under:

139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.—If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do,



and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

141. Surety's right to benefit of creditor's securities.—A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

48. A conjoint applicability of Section 139 and 141 of the Contract Act entails that the surety will be discharged to the extent of the value of the security provided by principal-debtor to the creditor at the time of contract of guarantee, irrespective of the surety being aware of such additional security, if the creditor takes or omits to take any action inconsistent with the rights of surety that impairs the remedy of the surety against the principal-debtor or parts with such security against the principal-debtor without consent of the surety / guarantor.

49. For this principle to be applicable, there should be: (i) security to be provided by the principal-debtor in addition to the guarantee of surety at the time of providing the guarantee; (ii) creditor should take or omit to take such action that impairs the rights of the surety against the principal-debtor; and (iii) creditor should lose or part with such security provided by principal-debtor without consent of the surety irrespective of the knowledge of the surety.



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50. In the instant case, PNB did not lose or part with such properties of Respondent Nos. 5 and 8 and their mother, Smt. Premwati as they were released against the payment. Hence, the consent of Petitioners was not required before any such release. In any case, such release did not affect the rights of the Petitioners as the said properties were not of the principal debtor in the hands of PNB. Therefore, it is not open for the Petitioners to argue that their consent was required before such a release. Despite the absence of such consent, the Petitioners cannot be discharged.

51. Section 138 of the Contract Act extends the principle laid down in Section 44 of the Contract Act by permitting the creditor to release any of the co-sureties without having to discharge the other co-sureties. The said provision is based on the principles of equity, which is applicable only as between the co-sureties and the liability of every co-surety being joint, several and co-extensive with that of the principal debtor towards the creditor, it would not be open or permissible to the co-surety to canvass for a proposition that the release of a co-surety by the creditor would discharge the other co-sureties from their liability towards the creditor.

52. Hence, the decision in *State Bank of Saurashtra (supra)* relied upon by the Petitioners is distinguishable on facts and does not help the case of the Petitioners. In the said decision, the goods offered as security were pledged by the principal debtor and the bank was in legal custody of the goods and the bank was required to exercise prudence and care. Whereas, in the present case, the properties released by PNB were provided by co-sureties and the same were released against payment of amounts as determined by PNB. Reliance placed by the Petitioners on *State of M.P.*



(*supra*) and **P. Janakiram Chetty** (*supra*) is also misplaced on the same ground. It is settled position of law that the surety does not have a right to dictate terms to the creditor as to how the creditor should make the recovery and pursue the remedies against the principal debtor.

53. As regards the fraud as alleged by the Petitioners, it is trite law that fraud has to be proved by leading cogent evidence. For establishing fraud, there must be representation that was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. Level of proof required in such a case is extremely high. A heavy burden lies upon the party, who seeks to avoid a contract on the ground of misrepresentation, fraud or coercion, to prove any such allegation.

54. The Petitioners' submission that by releasing the properties belonging to the co-sureties being Respondent No. 5 and 8 and their mother, Smt. Premwati collusion and fraud by the officials of PNB stands proved is not sufficient. There is no evidence to conclusively prove an element of fraud or collusion by the officials of PNB at the time of creation of mortgage other than mere allegation of the Petitioners. The contemporaneous conduct of the Petitioners shows that they were fully aware about the nature of the transaction with PNB and never objected to at the relevant time. No evidence to support the averments of fraud, especially against the officials of PNB was relied upon by the Petitioners before the Ld. DRT.

55. Even the Ld. DRT came to conclusion that the principal-borrowers seem to have played fraud on the Petitioners. Therefore, the learned DRAT correctly held in the impugned order that the mortgage of the Properties was not vitiated by fraud as PNB could not be made responsible for any such



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fraud, if at all, committed by Respondent No. 2 upon the Petitioners and PNB did not lose its status as a 'secured creditor'. Learned DRAT found that the Petitioners had neither named the officials of PNB nor were they made parties in the SA. Even the criminal proceedings were also filed against Respondent No. 2, who had not been so far found guilty by any competent court at the time of passing of the impugned order. Hence, the Petitioners' reliance upon the cases of *Pradeep Kumar v. Postmaster General* (*supra*) and *State Bank of India v. Shyama Devi* (*supra*) is misplaced as the Petitioners have failed to prove the alleged fraudulent act by the employees of PNB.

56. In view of the above, we do not find any infirmity with the reasons for passing the impugned order and no interference is required. We concur with the finding of the learned DRAT that the mortgage was created in favour of PNB by the Petitioners and PNB had the right over the Properties in terms of the charge created by the Petitioners respectively and the same is upheld. Accordingly, the present Petitions are dismissed without any order as to costs.

TEJAS KARIA, J

VIBHU BAKHRU, J

APRIL 21, 2025/ 'A'

[Click here to check corrigendum, if any](#)