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

Decided on: 30th January, 2015

+ W.P.(C) 886/2015

NEERAJ VAID

..... Petitioner

Through Mr. Rajan Sharma and Mr.
Mrityungay Kumar Singh, Advs.

versus

INDIAN OVERSEAS BANK & ORS.

..... Respondents

Through Mr. Karan Khanna and Ms. Asmita
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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CM No.1544/2015

Exemption is allowed subject to all just exceptions.

The application is disposed of.

W.P.(C) 886/2015 & CM 1543/2015 (stay)

1. Issue notice.
2. Mr. Karan Khanna, Adv. accepts notice.
3. With the consent of the counsel for the parties, the matter was heard finally.
4. Writ petitioner is aggrieved by order dated 05.12.2014 of the DRAT, whereby it declined his application for waiver of pre-deposit as a condition

to the hearing of the appeal pending before it i.e. SA No.67/2011.

5. The petitioner was Director of M/s Angelo Brothers Company (India) Ltd. – the second respondent. In the course of a transaction of the second respondent he had furnished a mortgagee to the first respondent back. At that time, he was a Director. He urges that he resigned from the directorship on 20.09.2004 and relies upon the certified copy of Form No.32 furnished to the Registrar of Companies on 10.12.2004 – which has been placed in the record. The first respondent Bank had sanctioned a credit limit of Rs.3.8 crores in favour of the second respondent against which the petitioner had provided collateral. It is submitted that the original sanction of the loan which was a secured deed of hypothecation of stocks, fully secured the credit limit, through a charge on raw material, finished goods and receivables. However, on 3.12.2004, the credit limit of the second respondent was enhanced. A personal guarantee by the petitioner was fixed against this, by the Bank. Subsequently, credit limit was once again enhanced on 6.3.2006. In these circumstances the petitioner's substantial grievance is that having tendered a resignation from the directorship, which was accepted by the company and duly intimated by the Registrar, enhancement of limits after his resignation, could not have been occasion for casting any liability upon him. The appellant relies upon provisions of the Contract Act and Section 139 specifically, to say that if the surety's remedy is caused to be impaired by the creditor, by an act or omission against the rights of the surety then the surety is discharged. It was urged besides that the petitioner was never a guarantor to the loan or advance given to the second respondent. Learned counsel also relied upon letter dated 14.12.2004 by the respondent-bank which had unequivocally waived the

personal guarantee given by him and the collateral security of the property at Dwarka. It is submitted that in these circumstances the denial of waiver of pre-deposit was unjustified.

6. Counsel for the respondent urges that the impugned order of the DRAT is justified, since the provisions of SARFAESI did not permit the DRAT to waive any amount beyond 25%. It is also submitted that having regard to this, the overall materials on record which was considered by the DRAT in its order are not to be interfered with. It is evident from the discussion that the petitioner was merely a Director of the borrower – second respondent. He is apparently a party to the loan by deposit of his title deeds. Further, significantly, there was no personal guarantee and apparently the bank does not rely upon any other document, pointing to his liability. The other important circumstances are that after his resignation – which was duly noted by the Registrar of Companies, the enhancement of credit limits could not prima facie have created a fresh liability – or apparently even condoned the subsisting law – in the absence of his consent. The letter dated 14.12.2004, in this Court's opinion, indicating release from waiver of his guarantee in collateral security, is a reiteration of this legal position. The said portion of the letter of the Indian Overseas Bank is as follows :

“1. The present guarantee of Mr. Neeraj Vaid is waived.

2. The collateral security of the flat property at Dwarka valued ₹15.64 lacs belong to Mr. Neeraj Vaid is waived.”

7. This Court is also mindful of the fact that on 07.02.2006 itself, the

terms of fresh credit had been indicated to the petitioner, who had addressed a complaint to the bank. In reply, the latter indicated that the fresh enhancement of credit limits was secured by personal guarantee of Mr. Balraj Sakhuja's infusion of capital to the tune of ₹50 lakhs, towards the capital of second respondent company. The bank noted that the company was refusing to issue "No Objection Certificate" since Mr. Sakhuja had not deposited entire ₹50 lakhs, but had instead paid only ₹40 lakhs. However, the bank stated as follows :

"In view of the foregoing facts we are treating the matter as closed. Please arrange for early compliance of the requisite formalities to enable our branch to release your property."

8. Having regard to the above facts and circumstances, we are clearly of the opinion that the direction by the impugned order to deposit 25% of the notice amount would result in grave injustice, since *prima facie* the petitioner does not appear to be liable for the transaction. In these circumstances the impugned order, to the extent it directs deposit of the amount, is hereby set aside. The petitioner's appeal shall be heard on its merits and disposed of in accordance with law.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

JANUARY 30, 2015
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