

(2025) 01 CAL CK 0002

Calcutta High Court (Original Side)

Case No: GA No. 1 Of 2022 In CS (COM) No. 339 Of 2024 (Old No. CS 14 Of 2022)

Meera Dhanuka

APPELLANT

Vs

Bank of India & Another

RESPONDENT

Date of Decision: Jan. 10, 2025

Acts Referred:

- Contract Act, 1872 - Section 140, 141
- Commercial Courts Act, 2015 - Section 12A
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 13(2)

Hon'ble Judges: Krishna Rao, J

Bench: Single Bench

Advocate: Jishnu Chowdhury, A. Agarwalla, Varun Kothari, Debjani Mukherji, Rudraman Bhattacharya, Sourojit Dasgupta, Victor Dutta

Final Decision: Dismissed

Judgement

Krishna Rao, J

1. The plaintiff has filed the present application being G.A. No.1 of 2022 in C.S. (COM) No. 339 of 2024 (Old No. C.S. 14 of 2022) praying for mandatory direction upon the defendants to forthwith issue No Dues Certificate to the plaintiff in respect of the loans provided by the defendants in favour of the Company, namely, Riga Sugar Company Ltd. and injunction restraining the defendants from terming the plaintiff as a defaulter in respect of the loans provided by the defendants in favour of the Company, i.e. Riga Sugar Company Ltd. in any manner whatsoever.

2. The plaintiff has filed the suit against the defendants for declaration that the plaintiff's guarantee given to the defendants in respect of the loans provided by the

defendants in favour of the Company, Riga Sugar Company Ltd. has stood disclosed, mandatory direction upon the defendants to forthwith issue No Dues Certificate to the plaintiff in respect of the loans provided by the defendants in favour of the Riga Sugar Company Ltd. and perpetual injunction.

3. The plaintiff being the owner of the Flat No. III(A) (Ground Floor), (Front Portion), Plot No. W-52, Greater Kailash, Part-II, New Delhi - 110048 (hereinafter referred to as "said premises") had agreed to create equitable mortgage in respect of the said premises in favour of the defendant nos.1 and 2, for the purpose of securing certain financial assistance to be further rendered by the defendant no.1 in favour of the company, namely, Riga Sugar Company Limited belonging to the husband of the plaintiff.

4. As per suggestion of defendant no.1, GCA Technical Consultants was appointed to ascertain valuation of the said premises. As per valuation report dated 14th May, 2015, the value of the said premises was determined at Rs. 6,97,50,000/-. The plaintiff has agreed to provide a personal guarantee, as a surety for the said company, however, restricted to the value of the said premises. The plaintiff made over the title deeds of the said premises with the intention of creating mortgage. By a letter dated 1st December, 2015, the defendant no.2 renewed/sanctioned the credit facilities of the said company. On 17th December, 2015, the plaintiff has executed a Deed of Guarantee by which the plaintiff restricted her guarantee to the value of the said premises i.e. Rs. 6,95,00,000/-.

5. In the year 2016, the Company once again negotiated with the defendants for the same loans and on 12th May, 2016, a Term Loan Agreement recording the renewal was executed between the said company and the defendants.

6. Mr. Jishnu Chowdhury, Learned Senior Advocate, representing the plaintiff submits that the plaintiff's guarantee was extended from time to time, restricting the guarantee to the value of the said premises or to the extent of the term loan whichever is lower. The amounts were due and payable by the said company to the defendants, the defendants proceeded under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and issued notice under Section 13(2) of the said Act to the plaintiff as well as to the said company. The plaintiff has submitted her reply to the said notices and no further steps pursuant to the said notices was taken by the defendants.

7. Mr. Chowdhury submits that with the consent of the defendants, the said premises was sold by way of Deed of Conveyance dated 7th July, 2021 for a total consideration of Rs. 4,00,00,000/- and the said sum has been received by the defendants and upon receipt of the said sum by the defendants, the plaintiff's guarantee stood discharged. He submits that on 6th August, 2021, the plaintiff requested the defendants to record discharge of her liabilities and to issue necessary documents but the defendants by a

letter dated 11th August, 2021 refused to accede to the request made by the plaintiff.

8. Mr. Chowdhury submits that the guarantee of the plaintiff was restricted to the extent of the term loan or the extent of value of the said premises, which ever was lower and with the consent of the defendants, the plaintiff has sold the mortgaged property and the defendants have appropriated the entire sale consideration, thus the plaintiff's guarantee in respect of the loans provided by the defendants in favour of the company has stood discharged.

9. Mr. Chowdhury submits that the defendants are not issuing No Dues Certificate to the plaintiff and are in the process of treating the plaintiff as defaulter but the same is impermissible and the plaintiff cannot be treated as a defaulter.

10. Per contra, Mr. Rudraman Bhattacharya, Learned Senior Advocate, representing the defendant no. 1, submits that the suit filed by the plaintiff is not maintainable under law, as this Court is not having jurisdiction to try and determine the dispute between the parties. He submits that the plaintiff has attempted to restrain the defendant no.1 from taking steps under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016.

11. Mr. Bhattacharya submits that the suit is not maintainable as the plaintiff has not complied with the provisions of Section 12A of the Commercial Courts Act, 2015 by instituting of pre-institution mediation process. He submits that the plaintiff has filed the present application and the suit by suppressing the material facts.

12. Mr. Bhattacharya submits that at the time of furnishing the guarantee by the plaintiff, the value of the said premises was Rs. 6.58 Crores based on the valuation report dated 2nd July, 2018 but at the time of sale of the said premises, the value of the said property was fixed at Rs. 4.00 Crores. The sale proceeds of the said premises have been adjusted with the liability of the Riga Sugar Company Limited and the defendant no.1 has every right to proceed against the plaintiff for balance outstanding amount.

13. Mr. Bhattacharya submits that by a letter dated 11th June, 2021 and by an email dated 5th July, 2021, it was again informed to the plaintiff that the personal guarantee of the plaintiff shall continue even after the sale of the said premises at Rs. 4.00 Crores and that the liability of the plaintiff will not cease. He submits that the plaintiff was always aware that the sale of the said premises would not and can never amount to release or dischargement of her guaranteed liabilities towards the defendant no.1. He submits that the account of the principal debtor, namely, Riga Sugar Company Limited was declared as Non-Performing Asset on 30th September, 2018 and thereafter, the defendant no.1 had every right to proceed against the plaintiff for enforcing such guarantee.

14. Mr. Bhattacharya submits that prayer (a) of the present application and prayer (b) of the suit are similar and identical. He submits that if this Court allows the prayer (a) of the present application, the same amount to final decree in the suit which is not permissible under law. Mr. Bhattacharya in support of his submissions relied upon the judgment in the case of Samir Narain Bhojwani Vs. Aurora Properties and Investments and Another reported in (2018) 17 SCC 203.

15. The plaintiff has relied upon Clause - 2 of Deed of Guarantee dated 17th October, 2015 which reads as follows:

"2. This Guarantee shall be a continuing guarantee for the purpose of securing the whole of the monies (actual and contingent) mentioned in clause 1 hereof (subject to the aggregate principal amount under the said Credit facilities not exceeding Rs. 6,94,00,000/-(Rupees Six Crores Ninety Four Lacs), together with all interest, thereon, or on such sum as may be due, at the rate of 4.80% over Base rate i.e. presently at 14.50% p.a. with monthly rests or at such other rate of interest as the Borrower shall be liable to pay from time to time under the said Credit facilities and, such penal/additional interests, costs, commissions and other costs, charges and expenses, payable by the Borrower under the said Credit facilities, that have accrued or shall accrue due to the Bank at any time before or after the date of demand. The Guarantor/s shall be liable for interest on all the monies guaranteed hereunder on daily balance basis or at such other basis, compounded at monthly rests, till the date of actual realization of the dues by the Bank. The Guarantor/s shall be bound by the rate/s of interest, as may be fixed by the Bank from time to time, for the said Credit facilities sanctioned to the Borrower. The Guarantor/s further agree that Bank shall be within its absolute right to fix and revise the rate/s of Interest and the manner of capitalization of the same, from time to time, in respect of all or any of the said Credit facilities granted to the Borrower and in this regard the Guarantor/s agree that notwithstanding anything contained in this agreement or in any other writings the notice board of the Branch office of the Bank from where the Borrower has availed the said Credit facilities or through entry of interest charged in the statement of Account/Loan Account of the Borrower. The revised rates of interest/procedure shall be applicable and binding on the Guarantor/s from the effective date stated in the said publication/display."

16. The plaintiff also relied upon the Clause - 11(4)(2) of the Loan Agreement dated 12th May, 2016 which reads as follows:

"11(4)(2) Personal Guarantee.

In order to secure her obligations and/or liabilities under the Guarantee, as aforesaid, Meera Dhanuka should create first mortgage and/or charges over and

in respect of her residential Flat No.3 (Ground Floor) (front portion) having super built up area 2206.00 square feet on Plot area 990.00 Sq.yards (828.70 Square Meters) [proposed] comprised in Plot No.W-52, Greater Kailash, Part - II, New Delhi and the Guarantee of Meera Dhanuka shall however be restricted to the value of her above residential property at New Delhi provided however the Guarantee of Meera Dhanuka shall be restricted to the amount of Term Loan or value of her residential property at New Delhi, whichever is lower to be mortgaged in favour of the Lenders as and by way of first pari passu charge in order to secure her obligations and/or liabilities under the Guarantee as also to secure the said Term Loans."

17. The specific case of the plaintiff is that the plaintiff has sold the said premises after approval of the defendants for a total sum of Rs. 4.00 Crores and the total amount has been realized by the defendant bank and as per the above mentioned clauses, the defendants are required to discharge the plaintiff as guarantor. The defendants are relying upon Clauses- 9, 19 and 22 of the Deed of Guarantee dated 3rd November, 2017 which reads as follows:

"9. Notwithstanding the Lead Bank's right under any security which the Lead Bank may have obtained or may obtain the Lead Bank shall have fullest liberty to call upon the Guarantor to pay the principal sum not exceeding Rs.82.50 Crore together with interest as well as the costs (as between Advocate and client) charges and expenses, and/or other money for the time being due to the Lead Bank in respect of or under the above mentioned credit facilities or any of them without requiring the Lead Bank to realise from the Borrower the amount due to the Lead Bank in respect of the abovementioned credit facilities and/or requiring the Lead Bank to enforce any remedies or securities available to the Lead Bank.

19. The Guarantee hereby given is independent and distinct from any security that the Lead Bank has taken or may take in any manner whatsoever whether it be by way of hypothecation, pledge and/or mortgage and/or any other charge over goods, movables or other assets and/or any other properties, movable or immovable and that the Guarantor has not given this guarantee upon any understanding, faith or belief that the Lead Bank has taken and/or may hereafter take any or other such security and that notwithstanding the provisions of Section 140 and 141 of the Indian Contract Act, 1872 or other section of that Act or any other law the Guarantor will not claim to be discharged to any extent because of the Lead Bank's failure to take any or other such security or in requiring or obtaining any or other such security or losing for any reason whatsoever including reasons attributable to its default and negligence benefit of any of other such security or any of rights to any or other such security that have been or could have been taken.

22. In terms of sanction the Guarantor hereby agrees and undertakes to create mortgage over and in respect of her residential Flat being Flat No.3 (Ground Floor) (front portion) having super built-up area of 2206.00 Square feet on Plot area 990.00 Sq. yards (828.07 square meters) [proposed] comprised in Plot No. W-52, Greater Kailash, Part - II, New Delhi, in order to secure her obligations and/or liabilities under this guarantee and notwithstanding anything to the contrary herein contained, the liability of the Guarantor under this Guarantee shall be restricted to the value of her residential property as aforesaid i.e. Rs._____-/- mortgaged and/or agreed to be mortgaged in favour of the Lead Bank.”

Relying upon the said Clauses, the defendants says that the latest sanction being M. Com dated 20th February, 2021 even after sale of the residential flat at the rate of Rs. 4.00 Crores, the personal guarantee in the account of M/s Riga Sugar Company Limited will continue.

18. By a letter dated 7th January, 2020, the defendant bank informed the Kataria Constructions Pvt. Ltd. about the terms and conditions of the sale and purchase of the property of the plaintiff. Subsequently, on 7th July, 2021, a Sale Deed was executed between the plaintiff and one Mrs. Bhavna Kataria with respect to the mortgaged flat of the plaintiff for a total sum of Rs. 4.00 Crores. Before execution of the Sale Deed dated 7th July, 2021, the defendant bank by a communication dated 19th March, 2021 informed Riga Sugar Co. Ltd. that “Release of personal guarantee of the plaintiff upon sale of the Delhi flat is declined by competent authority”. Subsequently, by a communication dated 11th June, 2021, the defendant bank informed the plaintiff that as per sanction by the competent authority, the personal guarantee in the account of M/s Riga Sugar Co. Ltd. shall be continued even after the sale of the flat at the rate of Rs. 4.00 Crores and liability as a personal guarantor will not cease. In the said communication, it was further clarified that on receipt of Rs. 4.00 Crores in the account of M/s Riga Sugar Co. Ltd., the liability may be reduced by Rs. 4.00 Crores.

19. The plaintiff had the knowledge before execution of sale deed with respect to her flat for a total sum of Rs. 4.00 Crores, the defendant bank will not release her personal guarantee, but the plaintiff has executed sale deed and now claiming for her release as guarantor of M/s Riga Sugar Co. Ltd., thus this Court finds that the plaintiff has not made out any prima facie case or balance of convenience in her favour.

20. As regard to the maintainability of the suit, the same is to be decided at an appropriate stage, the same cannot be decided at the time of hearing of injunction application. As regard to the noncompliance of the provision of Section 12A of the Commercial Courts Act, 2015, this Court finds that at the time of admission of plaint, leave under Section 12A of the Commercial Courts Act, 2015 was dispensed with.

21. In view of the above, G.A. No. 1 of 2022 in C.S. (COM) No. 339 of 2024 (Old No. C.S. 14 of 2022) is dismissed.