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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 23rd May, 2025
+ **W.P.(C) 7127/2025, CM APPL. 32168/2025 & CM APPL. 32169/2025**

MANOJ SINGH

.....Petitioner

Through: Mr. Apoorv Rastogi and Mr. Harshal Kumar, Advocates.

versus

BHARAT SANCHAR NIGAM LIMITED & ORS.Respondents

Through: Ms. Urvi Mohan, Advocate for R-4.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by the Petitioner under Article 226 of the Constitution of India challenging the impugned award and the Order-in-Original dated 10th December, 2020 by which the stay application of the Petitioner has been rejected.
3. The brief background of the present case is that he is a Sub Divisional Officer, Telecom in BSNL, Halwani, Uttarakhand. A loan was given by Respondent No.3-C.A. Thrift & Credit Co-operative Society (hereinafter 'Society') for a sum of Rs. 6,00,000/- to Mr. Arpit Singh (hereinafter 'Principal Borrower') for whom the Petitioner and one other colleague had stood as surety. The Principal Borrower had not repaid the money which led to the Society filing a claim with the Registrar of the Co-operative Society (hereinafter 'RCS') on 30th June, 2018 claiming a sum of Rs. 6,43,062/-. The said matter was referred to arbitration and consequently the award dated 18th July, 2019 came to be passed *vide* which the loan was held to be recoverable



from the Principal Borrower and the Sureties jointly or severally.

4. The grievance of the Petitioner is that he was not given an opportunity to appear before the Ld. Arbitrator to present his case on merits. The Petitioner then challenged the said award by filing an appeal before the Delhi Co-operative Tribunal (hereinafter 'DCT'). Additionally, an application for staying the execution of the award was also filed on 06th February, 2020. However, the same came to be dismissed by the DCT in the following terms on 10th December, 2020.

“13. It is well settled that the liability of a surety/ guarantor as per Section 128 of the Indian Contract Act, is co-existent with that of the principal borrower. There is a plethora of judgements by the Hon'ble Supreme Court laying down that a surety cannot wriggle out of the liability to pay the full amount in case the principal debtor defaults. Some of those decisions of Hon'ble Supreme Court are - Bank of India Ltd. Vs. Vishwanath Jhunjhunwala (2009) 9 SCC 478, Bank of Bihar Vs Damodar Rao AIR 1969 SC 297 and Ram Kishan & Ors. Vs. State of UP (2012) 11 SCC 511 etc. In the last mentioned case, the Hon'ble Supreme Court has observed as follows:-

"The surety has no right to restrain the execution of a decree against him until the creditor has exhausted his remedy against the principal debtor."

14. As already stated earlier, the award and its execution is being challenged only on the ground that the first liability was of the principal borrowers to recover from whom not much efforts have been made by the respondent society.

15. In view of the above consistently followed and reiterated principle of law by the Hon'ble Supreme Court, we are not inclined to stay the operation of the award at this stage. The application stands dismissed."



5. The Petitioner thereafter is stated to be pursuing the appeal but did not challenge the rejection of the stay application.

6. Subsequently, attachment orders were issued on 04th September, 2024 and 27th September, 2024 in respect of the salary account of the Petitioner. However, there was some error in the said attachment orders, which was corrected recently on 06th May, 2025 and the actual amount recoverable is ascertained to be Rs. 13,54,711/-.

7. Considering the fact that

- (i) the Petitioner is an Employee of BSNL;
- (ii) the fact that he stood surety is not disputed by him;
- (iii) he is only one of the sureties out of the three sureties; and
- (iv) lastly, since the Petitioner and his family would be dependent upon his monthly salary for their survival and livelihood,

it is deemed appropriate to direct the Petitioner to deposit a sum of Rs. 2,00,000/- with the Recovery Officer before 10th July, 2025, subject to which the attachment of the salary account shall stand lifted. This shall, however, be subject to outcome of the appeal before the DCT.

8. Accordingly, the present writ petition is disposed of in above terms. All the pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 23, 2025/MR/Ar.