Before M.S. Ramachandra Rao & Jasjit Singh Bedi, JJ.

M/S LEKH RAJ NARINDER KUMAR AND ORS — *Petitioners*

versus

UNION BANK OF INDIA AND ANR. — *Respondents*

CWP No. 1954 of 2021(O&M)

July 13, 2022

Constitution of India, 1950— Art. 14, 226, 227— Continuing guarantee— Revocation of personal guarantees given for credit facilities extended by bank— Date on which revocation would be applicable— Extent of liability of the guarantor to discharge of personal guarantee once guarantee is revoked — Held, letter issued and notice thereof in terms of clause in the personal guarantee agreement exonerates the person from his liabilities — However the person would be bound to clear the liabilities of the bank as on the date/till the receipt of such notice by the bank — There is no necessity for any approval of the revocation of the personal guarantees by the petitioners either by the bank or by the borrower — The guarantors cannot be made liable to pay an amount more than the amount standing in the account of the borrower on the date of revocation of guarantee— Petition Allowed.

Held, that the fact that the Bank had filed OA No.40 of 2020 before the DRT-II, Chandigarh and the fact that the petitioners can defend themselves in the said proceedings is also wholly irrelevant. The right of the petitioners' to approach this Court under Art.226 of the Constitution of India does not get annulled by such an act on the part of the Bank.

(Para 61)

Akshay Bhan, Senior Advocate assisted by A.S. Talwar, Advocate, *for the petitioners.*

Chetan Mittal, Senior Advocate, assisted by Saurabh Bhardwaj, Advocate and Mayank Aggarwal, Advocate,for the Bank.

M.S. RAMACHANDRA RAO, J.

<u>The Background facts</u>

(1) The petitioner No.1 is a partnership firm constituted on 26.04.1974 and re-constituted on 19.10.2012 with petitioner No.3 (As

Karta of his HUF), his brother Devraj Miglani (As Karta of his HUF), and their sons as partners for carrying on business of rice mill at Ambala-Jind road, near Hindu High School, Kaithal.

(2) The respondent No.2 is another partnership firm which was constituted 10.09.1985 and was re-constituted on 19.10.2012 with 5 partners including Ashok Kumar Miglani and Surinder Kumar Miglani, brothers of petitioner no.3 and Devraj Miglani to carry on business of another rice millat Shergarh road, Kaithal.

(3) The partners of both firms are descendents of Sh. Lekhraj Miglani and are thus related to each other.

(4) The respondent No.1- Bank (for short 'the Bank') had granted CC limit facility of Rs.30 Crores on 21.01.2013 to the respondent No.2.

(5) On account of the close relationship between the partners of both firms, and since one of the properties given as collateral security(a rice sheller unit situated at Shergarh road, Kaithal) was jointly held by petitioner No.3, Smt. Krishna Rani (the mother of petitioner No.4 who had died on 23.07.2016), personal guarantees were executed for those facilities in favor of the Bank by petitioners along with the partners of respondent No.2-firm and others.

(6) Though the actual letter of guarantee executed by petitioners has not been filed by both sides, it is not in dispute that it is in the format mentioned in Annexure P-4 and contains the following clause:-

> " THIS GUARANTEE shall be continuing security binding me/us and my/our personal representatives until the receipt by the Bank of notice in writing to discontinue it and notwithstanding the discontinuance by or any release or granting of time or indulgence to anyone or more of us this Guarantee shall remain a continuing security as to the other or others and if discontinued by notice this Guarantee shall nevertheless as to the party or parties giving such notice continue to be available (subject to the aforesaid limit of total amount) for and shall extend to all indebtedness and liabilities of the Principal to the Bank at the date of the receipt of such notice …

(7) Mr. Narinder Miglani (HUF) and Mr. Devraj Miglani (HUF) got partitioned under the deeds of partition dt. 01.04.2016. By

virtue of the said partition, the interest of petitioner No.3 and the petitioner No.4 got extinguished in the properties mortgaged to the Bank in respect of the loan granted by it to respondent No.2-firm.

(8) Consequent thereto, the constitution of the petitioner No.1-firm also changed.

(9) The petitioner No.1, petitioners No.3 to 5 addressed a letter Annexure P-7 on 10.02.2017 to the Bank informing it that the entire scenario of ownership of property and businesses of the firms had changed; that cross-guarantees which existed then between petitioner No.1-firm and respondent No.2-firm need to be revoked; that such guarantees had been given when there was joint ownership of the properties; now they are separately owned by the partners of the respective firms; so there is no need for cross-guarantees by both the firms and their partners. They stated that the said letter be treated as *notice for revocation of guarantee*; that petitioners No.1 to 5 would not sign any documents pertaining to the credit facilities of respondent No.2-firm; and if any limits are sanctioned or renewed by Bank post the date of the said letter, they shall not stand as guarantor for the same.

(10) In response thereto, the Bank addressed a letter dt. 21.02.2017 (Annexure P-8) recommending the release of the personal guarantees of the petitioners to the Regional Office of the said Bank at Karnal.

(11) Thereafter, the facilities of respondent No.2-firm were renewed vide Annexure P-9 letter dt. 18.03.2017. Petitioners alleged that at that time, petitioner No.4 was informed by the Bank that the process for the release of guarantees was on going on the basis of Annexure P-8, and so petitioner No.3 signed the sanction letter in good faith believing the inducement of the Bank.

(12) Petitioners contend that this was a yearly renewal of the credit facilities offered by Bank to respondent No.2-firm and *after* annexure P-9 renewal, the petitioners never continued their guarantees and repeatedly revoked the same.

(13) Annexure P-10 dt. 23.06.2017 is a letter addressed by petitioner No.1-firm through petitioner No.3 stating that officials of the Bank hadapproached him for signing the limit documents of respondent No.2-firm on the ground that the Central Office of the said Bank had not accepted the proposal for revocation of guarantee given by the petitioners; and *due to compelling circumstances and under pressure*, for the final time they are signing the limit documents for the limits

sanctioned/enhanced to respondent No.2-firm on 10.03.2017 *"under protest"*; and the said letter be treated as *notice of revocation of guarantee* by petitioner No.1-firm and its partners. It is also stated that they will not be compelled or bound to sign any documentspertaining to the renewal/enhancement of limits of respondent No.2-firm.

(14) Petitioners contend that on 17.04.2018, the Bank again requested the petitioners to sign on documents for an ad hoc limit of Rs.5 Crores under a separate deed of guarantee, which they did; but petitionersdid not agree for renewal of the limits for the regular limit in respect of which they had revoked the guarantees. The said limit of Rs.5 Crores has since been adjusted.

(15) Thereafter on 23.05.2018 another notice (Annexure P-11) for revocation of bank guarantee was given to the Bank by the petitioner.

(16) Notwithstanding the petitioners' notice regarding revocation of guarantees, the Bank forwarded a proposal for renewal of CC limits ofrespondent No.2 firm on 17.06.2018.

(17) Vide emails dt. 21.07.2018 the petitioners again wrote an email (Annexure P-12) regarding revocation of the bank guarantee.

(18) Vide Annexure P15 dt.7.9.2018, the Bank granted an approval for renewal and also enhanced credit facility of respondent No.2 firm for an amount of Rs.5 Crores. During these sanction proceedings it was clearly stated that the account shall be a sole banking account and thus no fund could be diverted. It further duly noticed about the release of guarantee on 27.8.2018 of Mr. Krishan Kumar Miglani as he was not an owner in any collateral property. The note surprisingly does not have mention of any of the notices given by the petitioners.

(19) The petitioners requested the bank for revocation of guarantee through email dt.28.3.2019 (Annexure P-16) and email dt.13.4.2019 (Annexure P-17) while referring to earlier documents dt. 23.06.2017 and 23.05.2018.

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(20) Alleging that the respondent No.1 was forcing the petitioner to infuse funds into the account of respondent No.2 firm, that the petitioners have also availed a loan from the Bank which is secured by various properties, and the Bank is using this leverage to force the

petitioner to cover its deeds of letting the funds being diverted notwithstanding that the personalguarantees already revoked, they filed CWP No.20484 of 2019.

(21) The respondents thereafter initiated action under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of the mortgaged properties by issuing notice dt.14.11.2019 under Section 13(2) and notice dt.30.1.2019 under Section 13(4).

(22) On 30.01.2020, this Court passed the following order in CWP-20484-2019 :-

> "Learned counsel for the petitioners submits that the petitioners have simply stood as guarantor surety Krishan Kumar has been permitted to revoke the guarantee Learned counsel for the petitioners further submits that their case has not been considered by the respondent bank on the same footing The petitioners be permitted to le a representation before the respondent bank and their case be considered on the analogy of Krishan Kumar The petitioners are permitted to make a representation within two weeks and the same shall be considered by the respondent bank by passing a speaking detailed order within a period of four weeks thereafter.
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> Learned counsel for the respondent bank has fairly submitted before the Court that no coercive steps are initiated against the petitioners only.
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> The writ petition stands disposed of."

(23) **The Impugned Order**

In compliance of the directions, the petitioners submitted a representation Annexure P-26 dt. 17.2.2020 to the respondent No.1.

(24) The impugned order dt. 08.09.2020 was passed by respondent No.1 rejecting the petitioners' requests giving certain reasons which will be considered later.

(25) The petitioners contend that :

> (i) the Bank had completely ignored the mandate of the orders of the High Court and the issues raised by the petitioner. In the impugned order instead of dealing with the issues as mandated by the High Court they have stated that

proceedings have been initiated before the DRT and all pleas canbe taken therein; and this was evasive conduct on it's part.

(ii) the petitioners had raised multiple issues including the collusive action of the bank in permitting diversion of funds by the borrower, the inclusion of the petitioners as guarantors in the sanction note notwithstanding that they had revoked the guarantee, the issue regarding funds already having been serviced after the revocation of guarantee and the release of guarantee of similarly situated persons. None of the issues have been adjudicated and the Bank has acted in a mala fide manner by stating that proceedings before the DRT have been initiated and all pleas betaken there.

(iii)Para2 (a) of the impugned order proceeds on the erroneous premise that the guarantee cannot be released as the accounts have already been declared NPA; but the petitioners had revoked the guarantee much before the accounts were declared NPA; and the release of guarantee has to be considered on the date of revocation and not after declaration of NPA.

(iv)the stand of the Bank that the borrower has not given their consent to the release of the guarantee is also not correct as the deed of guarantee does not contemplate the prior approval of the borrower; that the Guarantee is a separate contract, governed by its terms and can be revoked under its terms. Under the terms of the guarantee, no consent of the borrower or approval is required.

(v) the petitioners have from 10.02.2017 till April, 2019 issued various notices for revocation of guarantees. In light thereof, the action of the Bank in not issuing a formal release is arbitrary and unsustainable in the eyes of law. The Bank, being in a dominant position, and without authority of law, is coercing the petitioners to deposit amount without any notice by using anarm twisting mechanism.

Reply filed by Bank

(26) The Bank contended that Petitioner No.1 and respondent No.2 are two firms which have common family members and both of

them have availed the facilities by giving guarantees including personal guarantees in various accounts. The petitioners have stood guarantors for the repayment of the loan facility which is evident from the copy of the sanction letter dt. 18.03.2017 (Annexure P-9) where there was an enhancement of credit facility of Rs. 45 Crores to the tune of Rs. 50 Crores and the documents of guarantee were duly executed by petitioners.

(27) That during the year 2017-18, some ad hoc credit facilities to the tune of Rs. 10 Crores were also given to respondent No.2 however, the same stands recovered. The copy of the letter/guarantees signed by the petitioner for availing those facilities on 23.06.2017 and 17.04.2018 are annexed as Annexure R/2 (Colly.)

(28) Petition is not maintainable in the present form especially when petitioners failed to avail alternative remedy despite the fact that the remedy is existing in the statute for the action taken against the petitioner.

(29) The petitioner has raised various issues including the issues raised in the present writ petition in the earlier writ petition CWP No.20484 of 2019. However, this Court vide order dt. 30.01.2020 has only given the direction to decide the representation on the same analogy as that of Krishan Kumar. Therefore, the petitioner cannot re-agitate the same issue again in the present writ petition and there is a specific bar as per the settled principles of law.

(30) In the previous writ petition, the prayer was that the petitioners be released from the personal guarantee as the same has been revoked and the reliance has been placed in the case of another co-guarantor namely Krishan Kumar. In that case also much reliance was placed on the letter dt. 23.06.2017 (Annexure P-10) and notices dt. 23.05.2018 (Annexure P-11) as in the present writ petition.

(31) As far as the first letter dt. 23.06.2017 is concerned, it is stated that thereafter on 17.04.2018, the petitioners have signed the renewal documents of respondent No.2. Therefore, the alleged revocation of guarantee has become meaningless after the signatures on 17.04.2018 which has been done out of free will without any protest.

(32) The petitioners are trying to confuse the entire issue of revocation of bank guarantee vis-à-vis withdrawal of Bank guarantees. In this regard reliance has been placed by petitioners firstly upon the notice dt. 23.05.2018 (Annexure P-11), but the receipt of the same is disputed as it only bears a simpliciter stamp of the Bank whereas in

the letter dt. 23.06.2017 there is categorical signature without the stamp.

(33) Even for the sake of argument treating to be a letter received in the Bank it is respectfully submitted that it is not a revocation of Bank Guarantee either under the guarantee deed or in terms of Section 130 of the Indian Contract Act. In the said letter,Bank contends that the petitioners stated :

> "Thus, this request be treated as prior intimation for withdrawal of guarantee by M/s Lekh Raj Narinder Kumar & its partners. In future, we shall not be bound to sign any documents pertaining to renewal/enhancement of limits of M/s Lekh Raj & Sons."

(34) The Bank further contended that:

Though petitioners relied on Annexure P-12 dt. 21.07.2018, another alleged withdrawal sent to the Branch, the same was sent to MCB, South Delhi Branch wherein the petitioner's loan accounts are running and not to the concerned branch at Kaithal for withdrawal of petitioner's guarantee; further contents to the same only show that they were responding to some enquiry regarding personal guarantee of Sh. Ashok Kumar Miglani and Sh. Surinder Kumar Miglani;

-The petitioners themselves, not only from the letters, but throughout have been treating their request only for withdrawal from all liabilities for which they have signed in the guarantee deed subject to approval from the higher authorities i.e. the discharge of their entire liability under the guarantee deed, and do not seek simpliciter revocation by notice, which has a totally different consequence. The bare perusal of the arguments as well as the contents of the letter shows that it was a withdrawal of their liabilities under the existing guarantee sought by the petitioners, which is totally different from the revocation of bank guarantee as provided in the Guarantee deed.

(35) **Consideration by this Court**

In this case, we need to see:

(i) Whether the petitioners' personal guarantees given for credit facilities extended by the Bank to the respondent No.2 stood revoked?

(ii) If so from which date?

(iii)And what liability, if any, the petitioners are still bound

to discharge, if the personal guarantee is to held revoked?

The clause in the personal guarantee deed admittedly executed by petitioners in favor of the Bank states:-

" THIS GUARANTEE shall be continuing security binding me/us and my/our personal representatives until the receipt by the Bank of notice in writing to discontinue it and notwithstanding the discontinuance by or any release or granting of time or indulgence to anyone or more of us this Guarantee shall remain a continuing security as to the other or others and if discontinued by notice this Guarantee shall nevertheless as to the party or parties giving such notice continue to be available (subject to the aforesaid limit of total amount) for and shall extend to *all indebtedness and liabilities of the Principal to the Bank at the date of the receipt of such notice* ..." *(emphasis supplied)*

(36) The following can be inferred from a reading of the above clause:

a) By a notice in writing issued by the petitioners, the personal guarantee can be discontinued;

b) Notwithstanding the discontinuance, the guarantee shall remain a continuing security as to the other or others who did not seek discontinuance.

c) If discontinued by notice, the guarantee would continue to apply even to the parties giving such notice and would extend to all indebtedness and liabilities of the Principal to the Bank *at the date of receipt of suchnotice*.

(37) This is a continuing guarantee.

Sec.129 of the Contract Act,1872 defines a '*continuing guarantee*' as under:

"129. Continuing Guarantee:- A guarantee which extends to a series of transactions is called a 'continuing guarantee."

(38) Sec.130 of the Contract Act deals with the aspect of revocation of continuing guarantee. It states:

"130. Revocation of continuing Guarantee: A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor."

(39) We shall deal with a few decisions which lay down the principles to be applied to guarantees.

(40) In ***Industrial Finance Corporation of India Limited*** *versus* ***Cannanore Spinning and Weaving Mills Limited***[1] the Supreme Court held that a contract of guarantee is an independent transaction containing independent and reciprocal obligations and is not a contract regarding a primary transaction; and that it is on principal to principal basis.

(41) In ***Syndicate Bank*** *versus* ***Channaveerappa Beleri and others***[2] the Supreme Court had held, after considering Sections 126 to 130 of the Indian Contract Act, 1872, that a guarantor's liability depends upon the terms of his contract; and the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract.

(42) In ***Renu Gupta*** *versus* ***Debt Recovery Tribunal-II Chandigarh*** CWP-9138-2012 dt. 27.05.2013 a Division Bench of this Court held that under Section 130 of the Contract Act, 1872, a continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditor; that once the deed of guarantee permits revocation of the guarantee, in terms of Section 130 of the Contract Act, 1872, the liability of the guarantors would stand crystallized on the date the notice of revocation in writing is received by the creditor, and they cannot be made liable to pay any amount more than the amount standing to the account of the borrower on the said date.

(43) In the light of the above referred legal principles we shall now consider whether the Bank was justified in doing so.

(44) In the light of the above referred legal principles we shall now consider whether the Bank was justified in doing so.

(45) It is not in dispute that letter dt. 10.02.2017 (P7) was first issuedby the petitioners specifically saying that in view of the separate ownership of the partners of petitioner No.1 and respondent No.2 firms after the partition in the family, there is no need for cross guarantees; the said letter betreated as *notice for revocation of guarantee* on behalf of the petitioners and if any limits are sanctioned or renewed by the

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[1] 2002(5) SCC 54

[2] 2006(11) SCC 506

Bank to the respondent No.2 firm after the said letter was received by the Bank, they will not stand as guarantors for the same.

(46) On receipt of this letter admittedly on 21.02.2017 vide Annexure P8 recommendation was made by the Regional Office of the Bankat Karnal to its Head Office at Delhi recommending for release of thepersonal guarantees of the petitioners.

(47) While the decision with the Head Office was pending regarding release of personal guarantees, renewal/enhancement of cash credit facilities of the respondent No. 2 firm was proposed on 18.03..2017 from Rs. 45 crore to Rs. 50 crore and the petitioners claim that they were forced to renew the personal guarantees for the same.

(48) But later on 23.06.2017, they again wrote Annexure P10 stating that they will not stand as guarantors in respect of credit facilities to respondent No.2 firm and that they had signed the limit documents for the renewal/enhancement on 18.03.2017 under protest. They requested this letter Annexure P10 dt. 23.06.2017 be treated as *notice for revocation of guarantee*.

(49) In our opinion, this letter Annexure P10 is issued in terms of the above clause in the personal guarantee agreement executed by the petitioners and exonerates them from all liabilities from 23.06.2017, while binding themto clear the liabilities of respondent No.2 to the Bank as on the date ofreceipt of such notice by the Bank.

(50) It is not open to the Bank to contend that the loan account of the borrower had become an NPA on 31.10.2019 and so the Bank is unable to release the guarantee as stated in para 2(a) of the impugned order dt. 08.09.2020. The NPA of the loan account of the borrower/respondent No.2 had occurred long after 23.06.2017, when the *notice of revocation* vide Annexure P10 was given by the petitioners and received by the Bank. So it has no effect on the revocation of the personal guarantee. This is because the liability of the guarantors would sand crystallized on the date the notice of revocation in writing is received by the creditor and they cannot be made liable to pay any amount more than the amount standing to the account of the borrower on the said date as held in ***Renu Gupta*** *(2 Supra)*.

(51) The Bank is also not entitled to refer to the borrower's loan account being under continuous stress after 17.04.2019 (para 2(c) of the impugned order) or to the fact of the petitioners infusing certain funds on 28.03.2019 or 29.03.2019 (para 2(d) of the impugned order) to reject the request for revocation of personal guarantee made by the

petitioners because the said events, occurred long after 23.6.2017, and are wholly irrelevant for decision on the issue.

(52) It is no doubt true that an ad hoc facility of Rs. 5 Crore was sanctioned by the Bank to respondent No.2 firm on 17.04.2018, but for the said facility, the petitioners gave *separate guarantees* as can be seen from Annexure R1 (Colly) dt. 17.04.2018. Admittedly the said liability has been discharged and is not subsisting.

(53) So execution of such *separate* guarantees *for that* facility by thepetitioners cannot be said to have any bearing on the revocation of the personal guarantees given to the main CC limits facility given by the Bank torespondent No.2, and it is not open to the Bank to contend that this conduct would amount to the petitioners waiving their right to revoke the personal guarantees as per Annexure P-10 given by them on 23.06.2017, and continuing the personal guarantees beyond 23.6.2017. Therefore, the reason assigned in para 2(b) of the impugned order that because the petitioners had given guarantee for the ad hoc limit of Rs.5 Crore they are deemed to have acquiesced or waived the revocation, cannot be accepted. The decisions in ***Manak Lal*** *versus* ***Prem Chand***[3] ***State of Punjab*** *versus* ***Davinder Pal Singh Bhullar***[4]on the aspect of waiver of a right cited by the counsel for the respondents have no application to the instant case for the aforesaid reasons.

(54) No doubt the petitioners in the subsequent correspondence dt. 23.05.2018 (P11) email dt. 21.07.2018 (P12) used the word 'withdrawal' of personal guarantee. Even this in our opinion, is a reiteration by petitioners that they cannot be made liable under the personal guarantees for liabilities of the respondent No.2 firm to the respondent No.1 Bank after 23.6.2017, and cannot be construed as a claim by them for total exoneration of all liabilities by them post revocation of personal guarantees.

(55) We agree with the contention of the counsel for the petitioners that there is no necessity for any approval of the revocation of the personal guarantees by the petitioners either by the Bank or by respondent No.2Firm/borrower, that such a requirement is not contemplated under the terms of contract of personal guarantee, and it is not open to the Bank to contend that without such approval, the revocation has no legal effect. Therefore, the Bank is not right in

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[3] AIR 1957 SC 425
[4] 2011 (14) DCC 770

contending in para 2(e) of the impugned order that the borrower did not give consent for release of the guarantee and so there can be no revocation of the personal guarantees.

(56) In our considered opinion, when the Bank's Kaithal Branch itself recommended to it's Head Office for revocation of the personal guarantees of petitioners vide Annexure P8 dt.21.2.2017, the Bank's refusal to accept the revocation made by petitioners under the Letter Annexure P& dt.10.2.2017 or the subsequent revocation Annexure P10 dt.23.6.2017 and taking a legally untenable stand in the impugned order dt.8.9.2020 is malafide, arbitrary, unreasonable and intended to harass the petitioners.

(57) In ***ABL International Ltd.*** *versus* ***Export Credit Guarantee Corpn. of India Ltd.***[5] the Supreme Court has held that in an appropriate case, a Writ Petition as against the State or it's instrumentality arising out of a contractualobligation is maintainable where such action of the State or its instrumentality is arbitrary and unreasonable an violates the constitutional mandate of Article 14. It held **:**

> **"27.** From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:
>
> (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
>
> (b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writpetition in all cases as a matter of rule.
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> (c) A writ petition involving a consequential relief of monetary claim isalso maintainable.
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> **28.** However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limitedby any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the

[5] 2004 (3) SCC 553, at page 571

> exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks[15].) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction." (emphasis supplied)

(58) Also when there are no disputed questions of fact and the case turns on the interpretation of a clause in a contract, the petitioners cannot be forced to avail the cumbersome, expensive and dilatory alternative remedy inthe Debt Recovery Tribunal or Civil court.

(59) In ***ABL International Ltd.*** (6 Supra), the Supreme Court had referred to it's earlier decision in ***case of Century Spg. and Mfg. Co. Ltd.*** *versus* ***Ulhasnagar Municipal Council***[6] wherein it had held:

> "Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary."

(60) So we reject the plea of the Bank that this Writ Petition ought not be entertained and that the petitioner should made to avail the alternative remedy.

(61) The fact that the Bank had filed OA No.40 of 2020 before the DRT-II, Chandigarh and the fact that the petitioners can defend themselvesin the said proceedings is also wholly irrelevant. The right of the petitioners' to approach this Court under Art.226 of the Constitution of India does notget annulled by such an act on the part of the Bank.

(62) We are of the view that the direction given by this Court on 30.1.2020 in CWP No.20484 of 2019 to consider the representation of the petitioners cannot be construed by the Bank as a directive only to consider their request on the analogy of the case of Krishan Kumar, one of the partners, whose personal guarantee is released by it. It was obligated to applythe law on the subject and deal with the issue and it

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[6] 1970 (1) SCC 582

could not have given absurd and untenable reasons to harass the petitioners.

(63) It is also not open to it to contend that petitioners' cannot seekto agitate in the instant Writ Petition the issues raised by them in CWP.No.20484 of 2019 because there was no adjudication on merits in the said Writ Petition by this Court.

(64) For all these reasons, the Wit Petition is allowed:

a. The order dt.8.9.2020 passed by the Bank is held to be arbitrary, unreasonable and violative of Art.14 of the Constitution of India and the law relating to continuing guarantees in India;

b. The Annexure P-10 dt.23.6.2017 letter of the petitioners is held to be an effective revocation of the personal guarantees given by petitioners from the said date and the Bank is held not to have right to recover any amounts from them under the personal guarantees in excess of the amounts due by respondent No.2 to the Bank as on the said date.

c. No costs.

Dr. Payel Mehta