REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4043 OF 2015

(Arising out of SLP(C) No.10173 of 2011)

Central Bank of India … Appellant

:Versus:

C.L. Vimla & Ors. … Respondents

WITH

CIVIL APPEAL NOS. 4044-4046 OF 2015

(Arising out of SLP(C) Nos.14188-14190 of 2011)

M.A. Krishnamurthy … Appellant

:Versus:

C.L. Vimla & Ors. … Respondents

J U D G M E N T

Pinaki Chandra Ghose, J.

1. Leave granted.

2. These appeals, by special leave, arise from the Judgment and Order dated 23.12.2010 passed by the Division Bench of the High Court of Karnataka at Bangalore in Writ Petition No.3531 of 2007,

Writ Petition No.17320 of 2007 and Writ Petition No.17544 of 2007, whereby Writ Petition No.3531 of 2007 filed by C.L. Vimla was allowed while Writ Petition Nos.17320 and 17544 of 2007 filed by the auction purchaser and Central bank of India respectively, were dismissed.

3. The facts material to the present case are that Respondent No.1 C.L. Vimla who is a senior citizen aged about 85 years, is the guarantor. The appellant Central Bank of India is the Bank to whom the property involved in the present case, was mortgaged. The property involved in the present case is a residential house which was purchased by the husband of C.L. Vimla, namely, C.L.Narsimhaiah Shetty, under a sale deed dated 10.06.1997. She is in possession of the property along with other family members. Her husband, during his life time, executed a Will dated 31.05.1995 bequeathing his undivided share in favor of his sons equally and while settling the property he granted life interest in favour of the guarantor. However, he has not authorized her to

sell or mortgage the property. The property was mortgaged in favour of Central Bank of India (hereinafter referred to as "the Bank") for raising a loan of Rs.17,50,000/- for family business. The business suffered loss. Consequently, as the respondents were unable to repay the mortgage amount, the Bank filed O.A. No.309/2002 before the Debt Recovery Tribunal, Bangalore. The Debt Recovery Tribunal referred the case for settlement before Lok Adalat. The High Court Legal Services Committee considered the reference and passed an award whereunder the borrower have agreed to pay Rs.33,50,000/- as final settlement of the claim of the Bank. This settlement was not within the knowledge of the guarantor C.L. Vimla as she had not signed the joint memo. One of her sons N. Surya Bhagavan has signed it. Her advocate has also signed the Joint Memo. It was only on 5.4.2006 when she learnt that the property has been ordered to be sold by auction. She also learnt about the signing of Joint Memo by N.Surya Bhagavan and the Bank. So

she filed Writ Petition No.6625 of 2006 before the High Court of Karnataka for setting aside the award dated 20.03.2004 of the Lok Adalat, as far as she was concerned. The High Court by an order dated 1.06.2006, dismissed the writ petition on the ground of laches. Thereafter, she filed Writ Appeal No.899 of 2006, which was permitted to be withdrawn with liberty to approach the Lok Adalat for appropriate relief. Thereafter, the guarantor approached the Lok Adalat by filing an application under Order 9 Rule 13 read with Sections 21 and 25 of Legal Services Authority Act, 1987 on 03.10.2006.

4. During pendency of the writ petition, the Recovery Officer conducted auction on 5.10.2006. The guarantor filed an interim application being I.A. 1464/2006 on 17.10.2006 before the DRT for setting aside the same. The office of the DRT raised an objection stating that the application amounted to an appeal. The Guarantor requested the DRT on 2.11.2006 not to confirm the sale since her case was pending before the Lok Adalat at High

Court. The copy of the bid sheet did not contain the full particulars of the auction purchasers. Thus, she moved an application seeking stay of delivery of property. On 28.11.2006, the DRT directed the Recovery Officer not to deliver the property to the auction purchaser until further orders. In the meanwhile, the auction purchaser filed the applications seeking vacation of the Interim orders. On 22.01.2007, the interim order was vacated by the DRT in the absence of the appellant. Thus, the guarantor continued in possession till 31.1.2007. The auction purchaser moved an application on 01.02.2007 for recalling the order dated 22.01.2007. On 5.02.2007, the High Court Lok Adalat permitted the appellant to request the DRT to defer the proceedings. An application made in this regard was dismissed on 22.2.2007. The High Court Lok Adalat held on 5.2.2007 that the guarantor not being a party to the joint memo to referring the matter to the Lok Adalat, the decree is not binding on her. While the guarantor was agitating her right in the

property, the sale conducted is not valid in law, so she sought for setting aside the sale.

5. In Writ Petition No.17320 of 2007, the auction purchaser contends that he is the auction purchaser in the auction conducted by the Recovery Officer in pursuance of order passed by DRT in OA No.309 of 2002 and as per Certificate No.3264 issued by DRT on 5.10.2006. The auction purchaser has purchased the property for Rs.3.27 crores. In pursuance of the deposit the sale was confirmed on 15.11.2006.

6. The High Court of Karnataka, in the impugned judgment, has dealt with the issues individually. The Court had framed issues on the inherent power of the Lok Adalat, the action of the Debt Recovery Tribunal (DRT) in deciding the interim applications filed by the guarantor and the possession by the auction purchaser and payment of solatium to the Central Bank of India. On the issue of the inherent power of the Lok Adalat, the High Court after relying on a number of decisions held that as the guarantor was not a party to the

Joint Memo, the decree would not be binding on her. Regarding the validity of the sale, the High Court held that the sale was not done as per the mandate of the sale proclamation which said that the sale was to be conducted part by part and stopped as soon as the decree amount was realized. Thus, the High Court held that the auction was violative of Order 21 Rule 64. It also rejected the plea for solatium of 20% of the Central Bank of India.

7. The learned counsel for the appellant contends that the respondent cannot seek recalling of the settlement which was entered into between the Lender and the Borrower. The appellant contends that there is no provision under the Legal Services Authority Act, 1987 ("the Act", for short) which entitles the Lok Adalat to set-aside or adjudicate on its own orders. Under Section 21 of the Act of 1987 the awards of the Lok Adalat are given the status of a decree of a Civil Court and finality is given to them. Under Section 21(2), no appeal lies to any Court against the

award. The High Court has erred in upholding that the settlement entered into between the Bank and Borrower can be recalled at the behest of the Guarantor after 3 years of the settlement order being passed. The High Court has not appreciated Clause 2 of the Form of Guarantee that was executed by Respondent No.1 in favour of the Bank. She cannot escape liability merely on the ground of being unaware, after 3 years, when a letter dated 26.12.2006 was written by the learned counsel for the respondents to the learned counsel for the Bank, making an offer to settle the matter by paying Rs.33.50 Lakhs as per award dated 20.03.2004. The High Court has failed to appreciate that Respondent No.1 and her family members had availed loan for business purposes. They were unable to repay the loan amount. Thus, it is apparent that various proceedings were initiated by Respondent No.1 with a *mala fide* and fraudulent intent to stall the recovery proceedings. The High Court failed to appreciate that huge amounts exceeding Rs.52,45,967/- were

due, as on 20.03.2004, to a public institution and inspite of expiry of more than 10 years the Bank has not realized the amounts due. The High Court also failed to appreciate that the sale of mortgaged property was effected under provisions of Income Tax (Certificate proceedings) Rules. The sale was effected as per Rule 60 and Rule 61. The High Court failed to appreciate that the mortgaged property comprised of a residential house, car shed, vacant portico and open space and it was not possible to sell only a portion thereof. The learned counsel for the appellant finally concluded that the High Court was not justified in rejecting the request made by the appellant that if for any reason the Court came to the conclusion that the auction of the property is to be set-aside, 20 per cent of the bid money should be awarded to the appellant Bank as solatium.

8. The learned counsel for Respondents contends that the appellant has suppressed material facts, that the award passed by the Lok Adalat was without her consent and further, the sale

proceedings were null and void. Originally the partnership firm called Satyashree Silks had raised a loan of Rs.17.5 lakhs from Central Bank of India. The Counsel for the Respondents contends that she has got nothing to do with the firm. When the matter was pending before the DRT, N. Surya Bhagavan, Respondent No.2 signed a Joint Memo for referring the matter to the Lok Adalat. The counsel for the Respondents stated that Joint Memo was not signed by the Respondents. No notice was issued on the Joint Memo to the Respondents. Before the Lok Adalat, Respondents alleges that the Joint Memo was filed whereunder the partners of Satyashree Silks would repay the sum of Rs.33,50,000/-. The learned counsel contends that N. Surya Bhagavan had no authority to enter into a contract on behalf of the Respondents. After lapse of two years, the property was attached and notice of proclamation for sale was published on the ground of non-payment of amount. It was only at this juncture that the Respondents came to know of the settlement. As soon as the answering

respondent came to know of the proclamation and auction sale notice of the property, she preferred a writ petition before the Karnataka High Court, being W.P. No.6625/2006. The High Court dismissed the writ petition by its order dated 01.06.2006. The Respondents thereafter preferred a writ appeal being W.A. No.899/2006 and the High Court permitted the Respondents to approach the Lok Adalat for recalling of the award passed.

9. Learned counsel for the respondents further contends that when the recall application of the respondents was pending before the Lok Adalat, the appellant published sale proclamation. In the proclamation it was stated specifically that the property would be put for sale in lots, and it was further directed that if the amount is realized from sale of 1st lot, the sale would be stopped immediately. As per the contention of the Respondents, this vital document had been suppressed. As per the sale proclamation itself, it is clear that the dues as on that day were only Rs.52,45,967. On that very day the auction was

finalized for Rs.3.27 crores when actually the worth of the property was more than 5 crores. The auction sale was a collusive sale.

10. We have heard the learned counsel for the parties.

11. We are of the opinion that the questions that need to be decided by us are regarding the liability of the guarantor under Section 128 of the Indian Contract Act, 1872. The legislature has succinctly stated that the liability of the guarantor is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. This Court has decided on this question, time and again, in line with the intent of the legislature. In *Ram Kishun and Ors. v. State of U.P. and Ors.*, (2012) 11 SCC 511, this Court has held that "*in view of the provisions of Section 128 of the Contract Act, the liability of the guarantor/surety is co-extensive with that of the debtor.*" The only exception to the nature of the liability of the guarantor is provided in the

Section itself, which is only if it stated explicitly to be otherwise in the Contract.

12. In the case of *Ram Kishun* (supra), this Court has also stated that it is the prerogative of the Creditor alone whether he would move against the principal debtor first or the surety, to realize the loan amount. This Court observed:

> **"Therefore, the creditor has a right to obtain a decree against the surety and the principal debtor. The surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not. The surety does not have a right to dictate terms to the creditor as to how he should make the recovery and pursue his remedies against the principal debtor at his instance".**

Thus, we are of the view that in the present case the guarantor cannot escape from her liability as a guarantor for the debt taken by the principal debtor. In the loan agreement, which is the contract before us, there is no clause which shows that the liability of the guarantor is not co-extensive with the principal debtor. Therefore

Section 128 of the Indian Contract Act will apply here without any exception.

13. After a thorough reading of the Form of Guarantee for Advances & Credit Generally, our attention has been drawn to Clause 2 where Respondent No.1, C.L. Vimala and one of her sons N. Ramesh Babu, have stated under the relevant part of the clause as under:

> **"2)……*in relation to the subject matter of this guarantee or any judgement or award obtained by you against the principal debtor shall be binding on us*…."**

14. This Court has held in *United Bank of India v. Bengal Behar Construction Company Ltd. and others,* (1998) 8 SCC 653, that the Clauses in the letter of guarantee are binding on the guarantors as follows:

> **"In view of the above, the question regarding confirmation of the decree against the guarantors now needs to be settled. …… we see no reason why the guarantors should not be made liable under the letters of guarantee, the terms whereof clearly stipulate that on the failure of the principal debtor to abide by the contract, they will be liable to pay the amount due from the principal debtor by the appellants. *Clause 15 of the letter of guarantee, in terms states that any action settled or stated between the bank and the principal debtor or admitted by the principal debtor shall be accepted by the guarantors as***

> ***conclusive evidence. In view of this stipulation in the letter of guarantee, once the decree on admission is passed against the principal debtor, the guarantors would become liable to satisfy the decree jointly and severally."***
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> **(Emphasis supplied)**

Thus, we see no reason why the Joint Memo, which states compromise arrived at between the Central Bank of India and the principal debtors, would not bind C.L. Vimla when under Clause (2) she has admitted that any judgment or award obtained by the Central Bank of India against the principal debtor would bind the parties.

15. The mere fact of ignorance cannot be a valid ground. The respondent, C.L. Vimala and her son, N.Surya Bhagavan who signed the joint memo, were residing in the same house. We see no reason why the Respondent would not know of the joint memo, when she could have by reasonable means made herself aware of the proceedings.

16. It appears that respondent No.1 Smt. C.L. Vimla filed writ petitions one after the other, being Writ Petition No.6625 of 2006 filed on 1st

June, 2006, and another writ petition, being Writ Petition No.8186 of 2006, was filed by her two sons on 20th June, 2006. The said writ petitions were also dismissed by the High Court. Smt.C.L. Vimla had life interest of 1/6th share in the property in question. It is not in dispute that Smt.C.L. Vimla was residing with her son respondent No.3 and was under his care and custody and it appears from the facts that the said respondent No.3 categorically stated before the State Legal Services Authority on his behalf and on behalf of other defendants, including his mother, the respondent No.1, in respect of the settlement dated 20th March, 2004. We have further noticed that the Court on a number of occasions granted time to deposit the amount to meet the liabilities of the bank by the respondents. But it appears that, time and again, they have failed to comply with the orders.

17. The respondent Nos.3 to 8 who were actual owners of the property in dispute have remained ex-parte throughout, i.e. from the date of filing

of Miscellaneous Petition dated 29th April, 2006, challenging the award dated 20th March, 2004. Respondent No.1 had the only right of residence in respect of the property in question. She did not dispute the fact that she was the guarantor in the transaction by which her sons took loan from the Central Bank. It is also not in dispute that the property was mortgaged with the Bank.

18. We cannot brush aside the fact that respondent Nos.4, 6 & 7 filed a claim petition before the Recovery Officer on 4th January, 2007 claiming their share of balance of sale proceedings after adjustment of the dues of the Central Bank which shows that the parties to the dispute have accepted the award passed by the Lok Adalat. It appears to us that the High Court did not consider the said facts and further it has escaped from the mind of the High Court that the auction purchaser has purchased the auctioned property for sale consideration of Rs.3.27 crores and 25% of the sale consideration was duly paid on 5th October, 2006 and furthermore on 19th October, 2006, the

balance amount of sale consideration was duly paid by the auction purchaser. We have further noted that the sale was confirmed on 15th November, 2006. The sale certificate was also issued in favour of the auction purchaser after paying the requisite stamp duty and registration fees which, as pointed out to us on behalf of the auction purchaser, to the tune of Rs.30,73,800/-. It is also not in dispute that auction purchaser was put in possession of the property and is still in possession of the property since the sale certificate was issued and registration was made in his favour. It is submitted on behalf of the auction purchaser that he has purchased the property by availing private borrowing for the said property and he is paying nearly Rs.5 lakhs per month as interest. Therefore, in our opinion, the equity and good conscience also has to play a role in the matter in question on the given facts and after considering the conduct of the respondents (C.L. Vimla and others) in the matter. In these circumstances, we feel that it would not

be proper for us at this stage to set aside the sale, as has been done by the High Court without taking into consideration all these facts. Further, the High Court has failed to appreciate these facts and wrongly held that the auction purchaser is a party to the negligence of the Recovery Officer and, accordingly, the sale was set aside. In our opinion, the auction purchaser had nothing to do in holding the auction. Rather he deposited the money after bonafidely participating in the auction and, in fact, suffered for long time to pay a price by participating in auction proceedings.

19. In these circumstances, we further noticed that the principal debtors were not prepared to pay back the amount to the Bank and did not choose to defend themselves properly. The conduct of the principal debtors also cannot be overlooked by us.

20. Accordingly, we set aside the order passed by the High Court and hold that since the auction purchaser has already paid the full amount of sale consideration and is in possession of the property

in question for more than about 8 years, for equity and good conscience, we do not intend to interfere with his possession and we, therefore, set aside the order passed by the High Court, and allow these appeals.

.....J
(J. CHELAMESWAR)

.....J
(PINAKI CHANDRA GHOSE)

New Delhi;
April 28, 2015.