

**2023 STPL(Web) 20 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE. AND HON'BLE MR. JUSTICE SATYEN
VAIDYA, JJ.)

RAJINDER KUMAR

Petitioner

VERSUS

HIMACHAL PRADESH STATE CO-OPERATIVE BANK LTD. AND OTHERS

Respondents

LEKH RAM

Petitioner

VERSUS

HIMACHAL PRADESH STATE CO-OPERATIVE BANK LTD. AND OTHERS

Respondents

CWP No. 514 of 2022 with CWP No.8743 of 2022-Decided on 6-7-2023

Civil

(A) Bank Loan – Calculations - Frivolous litigation instead of repaying the loan amount along with interest - General allegations that the amount as reflected in the statement of account is excessive. Similar stand has been taken by the guarantor, but, it has not at all been explained or for that matter argued how the calculations made by the respondent-bank are in any manner erroneous or incorrect or contrary to loan agreement or other documents executed between the parties. Petition dismissed.

(Para 4)

(B)Bank Loan – Liability of principal loanee and the guarantor – Held: Both the principal loanee and the guarantor, whose liability admittedly is co-extensive with that of the principal debtor.

(Para 6)

Advocate(s): For the Petitioner (s) : Mr. Subhash Mohan Snehi, Advocate, in both the petitions.
For the Respondents : Mr. Sunil Mohan Goel, Advocate, for the respondents in CWP No. 514 of 2022 and for respondent Nos. 1 to 3 in CWP No. 8743 of 2022.

JUDGMENT

Tarlok Singh Chauhan, Judge (Oral)-Since common questions of law and facts arise in both these petitions, therefore, the same were taken up together for consideration and are being disposed of by a common judgment.

2. The petitioner in CWP No. 514 of 2022 is the principal borrower/loanee, whereas, the petitioner in CWP No. 8743 of 2022 is the guarantor, (hereinafter to be referred to as the 'principal loanee' and 'guarantor') for the loan of Rs.1,70,000/-, that was availed by the principal loanee.

3. The principal loanee did not repay the loan as per the conditions of the loan documents that had been executed at the time of advancement of loan and consequently his account became non-performing assets (NPA) and, therefore, notices were issued to the principal loanee as well as the guarantor, for repaying the loan amount. Since, both of them, failed to repay the loan amount, therefore, arbitration proceedings were initiated against them and a sum of Rs.6,26,108/- as on 29.02.2020, along with interest, were awarded in favour of the bank vide award dated 20.03.2020. Since, both the principal loanee and guarantor failed to comply with the award, therefore, respondent-bank initiated execution proceedings and as against the outstanding amount in the loan account of Rs.7,29,380/-, the principal loanee had only deposited 3,17,300/-. If that was not enough, the principal loanee and the guarantor were again accommodated by the bank by considering the case of the principal loanee under One Time Settlement (OTS) of the bank whereby the petitioner was permitted to pay settlement amount of Rs. 4,30,000/-.

4. Lastly and more importantly, the principal loanee and the guarantor were afforded opportunities to settle the amount under OTS in the Lok Adalat and they still failed to do so. As against the settlement amount of Rs.4,30,000/- which was required to be deposited before 11.06.2022 against the outstanding amount of Rs.7,32,870/- as on 31.03.2021, the principal loanee deposited only a sum of Rs. 1,28,000/- till 11.06.2022 and instead of paying the same, the principal loanee has filed CWP No. 514 of 2022 assailing

the notice dated 20.11.2021 and practically on no grounds whatsoever, save and except, the general allegations that the amount as reflected in the statement of account is excessive. Similar stand has been taken by the guarantor, but, it has not at all been explained or for that matter argued how the calculations made by the respondent-bank are in any manner erroneous or incorrect or contrary to loan agreement or other documents executed between the parties.

5. Loans by financial institutions are granted from public money generated at the tax payers expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. (See: Authorized Officer, State Bank of Travancore and another vs. Mathew K.C. (2018) 3 SCC 85).

6. Bearing in mind the aforesaid exposition of law, we are clearly of the view that both the principal loanee and the guarantor, whose liability admittedly is co-extensive with that of the principal debtor (See: State Bank of India vs. Messrs. Index-port Registered and others, AIR 1992 SC 1740) have only indulged in frivolous litigation instead of repaying the loan amount along with interest.

7. Consequently, we find no merit in both these petitions and the same are accordingly dismissed, leaving the parties to bear their own costs. All pending applications, if any, also stand disposed of.
