

**SUPREME COURT OF INDIA**

Punjab & Sind Bank

Vs.

Debts Recovery Appellate Tribunal & Ors.

C.A.No.1410 of 2016

(Kurian Joseph and R.F.Nariman,JJ.)

16.02.2016

**JUDGMENT**

**Kurian Joseph, J.**

(Arising out of SLP(Civil)No.26542 of 2008)

1. Leave granted.
2. The appellant-bank is aggrieved by the impugned judgment dated 07.04.2008 of the High Court in C.W.P. No. 7730 of 2007. The appellant had challenged the order dated 09.01.2007 passed by the Debt Recovery Appellate Tribunal, New Delhi in Misc. Appeal No.134 of 2006 whereby the respondent No.2 herein had been ordered to be deleted as a defendant/guarantor in the Original Application No.343/2004, pending before the Debt Recovery Tribunal, Chandigarh.
- 3.The High Court at page 7 of the impugned judgment has held as follows :

"From the above pleadings of the parties, it is crystal clear that the bank has admitted that respondent No.2 had resigned from the Board of Director of respondent No.3-Company and another Director has executed a fresh guarantee substituting him. Thus, it does not lie in the mouth of the petitioner bank to say that respondent No.2 is not absolved of his liability even from the documents placed on record. The stand of the petitioner bank to the effect that the guarantee deed executed by respondent Nos. 4 and 5 on 13.5.2003 was additional guarantee, is falsified from fresh guarantee deed, executed by respondent Nos. 4 and 5, which shows that they had executed this guarantee deed for a sum of Rs.6,70,51,800.85 Ps., the exact amount, which was outstanding on that day. We also find that the loan amount of the petitioner bank has been secured by respondent company by executing mortgage deeds of sufficient valuable properties. In addition personal guarantees have also been executed by respondent Nos. 4 and 5."

4 The learned senior counsel appearing for the appellant submits that as a matter of fact, there is no guarantee furnished by anybody substituting the guarantee furnished by respondent No.2. Learned senior counsel for the Bank submits that from other proceedings before the Tribunal, it is clear that one Mr. Sharanpal Singh Juneja had executed a fresh guarantee in place of respondent No.2. Since the High Court has proceeded on the basis that there is already a guarantee executed by Shri Juneja substituting the respondent No.2, we find there is an error apparent on the face of the record for which the appellant has to approach the High Court itself by way of an application for review. Therefore, we dispose of this appeal permitting the appellant to move an appropriate application for review. We make it clear that in case review application is filed within a month from today, the same shall not be dismissed on the ground of limitation since the appellant has been prosecuting the case before this Court.

5 We make it clear that if there are any other errors which have crept in the impugned judgment of the High Court, it will be open to the appellant to take out the same in the review application.

6 We also make it clear that it will be open to the respondent No.2 to take up all available contentions before the High Court.

7. The appeal is disposed of with no order as to costs.