

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(Judicial Department)

Civil Revision No.04 of 2020

Muhammad Saleem Nawaz Malik
Versus
Higher Education Commission & another

Date of Hearing:	04.02.2020
Petitioner By:	Shahid Kamal Khan, Advocate.
Respondent No.1 By:	Mr. Binyamin Abbasi Advocate.
Respondent No.2 By:	Mr. Riasat Ali Azad Advocate.

Ghulam Azam Qambrani, J: Through the instant civil revision the petitioner has assailed the order, dated 14.12.2019 passed by the learned Senior Civil Judge (West) Islamabad, whereby application of respondent No.2 for change of guarantor/ surety, has been dismissed.

2. Brief facts for filing of the instant revision petition are that respondent No.1 (Higher Education Commission) has filed a suit for recovery of an amount of AUD 159,353 against respondent No. 2 and the petitioner which is pending before the learned trial Court. The petitioner/guarantor filed written statement wherein he had denied that neither he entered into any agreement with respondent No.1 (HEC) nor appeared before any authority for offering himself as guarantor on behalf of respondent No.2/ Scholar, so he cannot be held responsible for any wrong doing or mis-commitment of respondent No.2/ Scholar.

3. During proceedings before the learned trial Court, respondent No.2, Ms.Rabia Akram/ Scholar filed an application before the learned trial Court for change of guarantor/surety with the assertion that at the time of grant of scholarship, she had given the

name of Muhammad Saleem Nawaz Malik as guarantor in HEC for the approval of her scholarship. She made following prayer in the said application before the learned trial Court;-

“In the above mentioned circumstances, it is, therefore, respectfully prayed that the instant application may kindly be accepted and the proposed guarantor namely Bilal Akram s/o Ch. Muhammad Akram may be allowed as guarantor and the respondent No.2 may be relieved from his obligation in the above titled application in the best interest of justice.”

4. Learned counsel for the petitioner has contended that the petitioner never entered into any agreement with the HEC for grant of scholarship to respondent No.2 and further contended that documents of the petitioner have been misused without his permission. Further contended that the same property was already pledged with the Zarai Taraqiat Bank Ltd. Bahawalpur, and has been illegally used as guarantee of the Scholar/ respondent No.2, therefore, the petitioner cannot be held responsible for the agreement with the HEC.

5. Learned counsel for respondent No.1 conversely opposed the arguments advanced by the learned counsel for the petitioner and stated that respondent No.2 submitted an application form for award of scholarship, which was awarded to her by the respondent/HEC, Islamabad. The entire expenses, accommodation and monthly expenses were paid/ transferred to the respondent from the bank account of HEC. The agreement was prepared, surety bond, a financial soundness and declaration of assets of the petitioner were submitted by his free will and same were accepted. Further submitted that the petitioner has violated the terms and conditions of the agreement, dated 30.12.2009; the respondent/ Scholar is residing and serving abroad, whereas the HEC has incurred huge amount from the public exchequer on the study of respondent/ Scholar, but the petitioner and respondent have failed to honour their commitment and have wilfully violated all such conditions as laid down in the agreement. Further contended that the learned trial Court has rightly

dismissed the application for change of surety/guarantor. Learned counsel for the respondent/HEC lastly contended that the petitioner has not filed the necessary documents i.e. deed of agreement, guarantee to the Higher Education Commission, surety bond, etc and on this score also the petition may be dismissed.

6. I have heard the arguments of the learned counsel for the petitioner and learned counsel for the respondent/HEC and perused the record with their able assistance.

7. Perusal of the record shows that respondent No.2, namely Ms. Rabia Akram applied for overseas scholarship for Ph.d for which the said scholar was selected at a university in Australia and for completion of the requirement, deed of agreement was prepared on 30th day of December, 2009. Record further shows that the petitioner/guarantor while filing written statement has mentioned that neither he stood surety/ guarantor nor responsible for any obligation. Record further shows that respondent No.2 scholar filed an application for change of the surety/guarantor before the learned trial Court, but the same was dismissed vide order, dated 14.12.2019.

8. The petitioner signed, submitted and executed the surety/guarantee, and also provided certificate of financial soundness and stood as a guarantor to pay the amount if any breach in the terms and conditions of the agreement is committed by the Scholar to the Higher Education Commission/respondent No.1 to the following effect;-

"I, Muhammad Saleem Nawaz s/o Malik Allah Nawaz do hereby guarantee the payment of any such sum as penalty and compensation as prescribed and assessed by the Higher Education Commission which the above scholar may be called upon to pay to HEC for the project of any terms and conditions of the above agreement as well as those

governing MS/M.Phil leading to Ph.d scholarship (Linguistic) for the university of Sydney, Australia award and I hereby undertake to pay the total sum on demand in the event of scholar making a default in the payment of the sum.”

9. This guarantee was attested by marginal witnesses in the above said surety bond wherein it has been clearly mentioned that the Scholar and the surety/ guarantor was held and firmly bound-up to the President of Pakistan through Higher Education Commission for all amounts, charges, costs and expenses as may be determined by the President as having been incurred on or in respect of the trainee's studies/ training which amount will not question to be paid to the President, his successors in office or assigns for which payment well and truly to be made. It is a well settled principle of law that if the principal fails to fulfil obligations, the surety steps into the shoes of principal to do that, as such the surety is as responsible as the principal. The Hon'ble Supreme Court of Pakistan in the judgment titled as *“Rafique Hazquel Masih vs. Bank Alfalah Ltd & others”* [2005 SCMR 72] has enunciated as under:-

“Having given the afore-referred undertaking it is not open for the petitioner to wriggle out of it and raise the plea that the principal debtor should be proceeded against first for the recovery of loan. Furthermore, section 128 of the Contract Act specifically mandates that “the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract”.

The august Supreme Court of Pakistan in the judgment titled as *“Messers Huffaz Seamlan Pipe Industries and 2 others vs. Messers Security Leasing Corporation Ltd.”* [2002 SCMR 1419] has further elucidated and enunciated the principles as under;-

“The guarantor cannot resort to technicalities to defeat the claim of the creditor. Even where the contract becomes unenforceable against the principal

debtor, yet, the guarantor would still be liable for the surety he had executed; there was any covenant to the contrary.”

10. In another case titled as “*Messers State Engineering Corporation Ltd. Vs National Development Finance Corporation & others*” [2006 CLD 687], the Hon’ble Supreme Court of Pakistan has held as under:-

“Section 128 is applicable in the given circumstances. Liability of the guarantor/ surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract as envisaged in Section 128 of the Contract Act, 1872. They are jointly and severally liable to pay the outstanding amount to the creditor. A guarantor cannot shirk from the liabilities incurred by him through the execution of documents.”

11. In the case in hand, the petitioner has submitted surety bond on behalf of scholar/ respondent No.2 which is available on the record of learned trial Court and at this moment, the petitioner is denying the submission of the surety bond which fact is to be determined and decided by the learned trial Court after recording of evidence of the parties. The application filed by respondent No.2, for change of the guarantor has already been dismissed by the learned trial Court. At this stage, if the application of the petitioner for change of guarantor is accepted, then the guarantee documents submitted by the petitioner before the Higher Education Commission, prior to the award of scholarship, on the basis of which and fulfilment of other terms and conditions, the scholarship was awarded, it would lost its retrospective effects. Furthermore, the liabilities of the petitioner and respondent No.2 shall be determined after recording of evidence by the learned trial Court.

12. In view of what has been discussed above, the learned counsel for the petitioner could not point out any illegality, irregularity, jurisdictional or legal defect in the impugned order passed by the

learned trial Court calling for interference by this Court under Section 115 CPC. Hence, the instant civil revision being devoid of merits is hereby ***dismissed***.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on this 19th of February, 2020.

Judge

Approved for Reporting.

Rana. M. Ift

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