

IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA NO. 178 OF 2005

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Date of Decision: December, 2010

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HARISH C. BHASIN & ANR.

....Appellants

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Through: Mr. S.K. Puri, Sr. Advocate with
Mr. Pradeep K. Mittal, Mr. Praveen K.
Mittal and Mr. Gautam K. Laha, Mr.
Praveen Kumar & Ms. Hrishika Pandit,
Advocates.

Versus

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BANK OF BARODA & ORS.

... Respondents

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Through: Mr. Pallav Saxena, Advocate for
Respondent No. 1. None for Respondents
No. 2-4.

CORAM:

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HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

JUDGMENT

P.K.BHASIN, J:

The present appeal is filed by the two appellants for setting aside the judgment and decree dated 4th November, 2004 passed by the Additional District Judge whereby the suit filed by the respondent no.1 bank for recovery of ₹ 7,16,505/- and *pendente lite* and future interest thereon @ 16 ½ % p.a. has been decreed against the appellants as the principal borrowers and respondents no. 3-5 as their guarantors.

2. The relevant facts giving rise to the present appeal culled from the pleadings of the parties, evidence adduced by them and the submissions made during the course of hearing of this appeal by the counsel for the appellants and respondent no.-1 bank are that on 2nd January, 1981 appellant no.1, Harish Chandra Bhasin, as the sole proprietor of appellant no. 2, Raja Ram Bhasin & Co., was sanctioned cash credit facility of ₹ five lacs by the Traders' Bank Ltd.(which subsequently in May, 1988 had got amalgamated with Bank of Baroda). At that time appellant no.1 had signed usual loan documents and had also pledged some shares with the bank as security. Account no.84 was opened in the name of appellant no.2 on 2nd January, 1981 itself and thereafter the appellants had been withdrawing and depositing money in their said account from time to time. They had vide their letter dated 8th January, 1983, written to the Traders' Bank, admitted that a sum of ₹ 6,79,815.40 was correctly reflected in their account to be payable by them as on 31st December, 1982. However, in January 1983 the appellants wrote a letter to the Traders' Bank that the credit facility was given to them not for themselves but to accommodate bank's valuable customer P.S.Jain Motors(respondent no.5 herein) and so money due in the cash credit account should be recovered from P.S.Jain Motors. Thereafter also the appellants had written similar similar letters to the Traders' Bank but the Bank had been continuing to demand money from the appellants lying outstanding in their cash credit account while

denying the appellants' claim that they were not liable to re-pay the money due to the bank in their account.

3. The appellants did not clear their liability till April,1987. The Traders' Bank Ltd. got amalgamated with the Bank of Baroda, respondent no.1-plaintiff, pursuant to the notification dated 12th May,1988 issued by the Government of India under Section 45 of the Banking Regulations Act,1949. As a result of that amalgamation Bank of Baroda became entitled to recover the money which was still due from the appellants in their cash credit account with the erstwhile Traders' Bank Ltd. and accordingly it also demanded the outstanding amount of ₹ 495867.94 from them vide letter dated 26th June, 1988 and the appellants were called upon to clear these dues within ten days. It appears from the record of the trial Court that on receipt of the said demand letter in which respondent no. 1 had also claimed that in case of non-payment of its dues within ten days legal proceedings for recovery of the dues shall be initiated, respondents no. 3 to 5 herein, who were also already availing various credit facilities of crores of rupees from the erstwhile Traders' Bank Ltd. and out of whom respondent no. 5 herein, P.S. Jain Motor Co.(Punjab) Ltd. was according to the appellants' own case the real beneficiary of the cash credit facilities extended by the erstwhile Traders' Bank Ltd. in the name of the appellants, were introduced by the appellants to respondent no.1-plaintiff and they offered to clear the bank's

outstanding dues in the account of the appellants and to assure the respondent no.1–plaintiff that they really meant to honour their commitment to clear the bank’s dues they also offered to mortgage some land in favour of the bank. In that regard respondent no. 4 herein wrote a letter dated 31st May, 1988 to the respondent no.1–plaintiff and after verification of the title deeds in respect of the properties proposed to be mortgaged respondent no. 3 executed a formal agreement of guarantee in favour of respondent no.1–plaintiff on 6th October, 1988 and it also mortgaged its land situated in district Faridabad in favour of respondent no.1– plaintiff to secure the money due from the appellants. However, thereafter neither the appellants nor respondents no. 3 to 5 paid any money to the respondent no.1–plaintiff to clear the outstanding dues in the account of the appellants and, therefore, the respondent no.1–plaintiff was left with no other alternative but to initiate legal proceeding for the recovery of its money from the appellants and accordingly suit was filed on 21st August, 1990 for recovery of ₹ 7,16,505.85 which amount was claimed to be due on the date of the filing of the suit.

4. The appellants were arrayed as defendants no. 1 and 2 in the plaint and from now onwards reference to them shall be made in this judgment also as defendants no. 1 and 2. They contested the suit and in their written statement it was claimed by them, *inter alia*, that though the loan was taken by them from the erstwhile Traders’ Bank Ltd. but it was, in fact,

taken for the benefit of and utilization by one Mr. Ramesh Jain who happened to be one of the Directors of the Traders' Bank Ltd. and was also running his own Group of Companies(which were impleaded in the suit as defendants no.3-5 and are respondents no. 3-5 in this appeal and reference to them shall be made hereinafter as defendants no.3-5). It was also pleaded that defendant no.1 had only lent his name for the loan transaction and so the loan amount was repayable by that Ramesh Jain and his Group of Companies namely, defendants no. 3 to 5 and that was evident from the statement of account which showed the same that when loan was sanctioned the entire loan amount of ₹5 lacs was given to defendant no.5 and thereafter some amounts had been transferred from the account of defendant no.5 to the account in the name of the defendants no. 1 and 2 towards repayment of the loan and no payments were made by defendants no. 1 and 2. It was further pleaded in the written statement by defendant nos. 1 and 2 that in the year 1983 itself they had informed the erstwhile Traders' Bank Ltd. that the loan in question had been taken for Mr. Ramesh Jain and as per the clear understanding between the appellants and the Traders' Bank the loan amount was repayable by Mr. Ramesh Chand Jain and his Group Companies. Other objections taken in the written statement were that the suit, as framed, was not maintainable since in the plaint it had not been disclosed as to what amount was being claimed on account of principal and what was being claimed on account of

interest. The rate of interest being claimed by the plaintiff bank was also claimed to be arbitrary and excessive and so not chargeable in law. These defendants also denied having made any payments in their account at any time and pleaded that since they had disowned their liability in the year 1983 itself and the erstwhile Traders' Bank Ltd. having not initiated any legal proceedings for the recovery of its dues outstanding in the account in the name of the appellants for years the suit filed by Bank of Baroda was time barred. It was further pleaded by defendants no. 1 and 2 that since the loan in question was taken for the benefit of Mr. Ramesh Chand Jain that is why defendants no.3-5 had undertaken to clear the outstanding dues in the account of the appellants and they had accordingly written letters dated 31st May,1988 and 15th June,1988 and defendant no.3 and they had also executed a guarantee agreement dated 6th October, 1988 for a sum of ₹ 4,95,867.94 along with interest etc. and mortgage of some land in district Faridabad was also created by defendant no. 3 of Jain Group and ,therefore, the bank should have recovered its dues from the Jain Group only by exercising its rights as mortgagee in respect of the mortgaged land.

5. Defendants no. 3 to 5 also contested the suit by filing a joint written statement which was signed on behalf of defendant no. 3 by one of its Directors Sh. R.C. Jain and on behalf of defendants no.4 and 5 by one Sh. Prabhash Jain as a partner of defendant no. 4 and Director defendant no.

5. It was pleaded by these defendants, *inter alia*, by way of preliminary objections that the plaintiff bank had no cause of action against them and further that the suit was in any case time barred. On merits, it was pleaded by these defendants that they were availing of credit facilities extended to them by the Traders' Bank Ltd. through its branch at Jalandhar till 20th November, 1987 when suddenly the operation of their accounts was suspended on the ground that the Reserve Bank of India had imposed a moratorium due to which their entire business came to a standstill. When the Traders' Bank Ltd. got merged with the plaintiff bank they became very anxious for revival of their business and so they had approached the plaintiff bank for the revival of their credit facilities and after negotiations and talks with the officials of the plaintiff bank the officials of the bank coerced them to give letter dated 31st May, 1988 undertaking therein to have the account of Raja Ram Bhasin and Co. also regularized and the defendants were also asked to execute a bond of guarantee in respect of the account of defendant no. 1 otherwise the credit facilities being availed of by them shall not be revived. Since the defendants 4 and 5 were facing dire financial constraints and their business had come to a standstill they gave letter dated 31st May, 1988 on the terms and lines suggested by the officials of the plaintiff bank the plaintiff bank also got executed a bond of guarantee from defendant no. 3, a sister concern of defendant nos. 4 and 5, and also got mortgaged its land but even then their credit limits

were not revived and consequently the commitments made by them in the letter dated 31st May, 1988 of defendants 4 and 5 and in the bond of guarantee dated 6th October, 1988 executed by defendant no.3 in favour of the plaintiff bank became illegal and void being without consideration and consequently unenforceable in law.

6. The above-noted pleadings of the parties led to the framing of the following issues by the trial Court:-

- “1. Whether the plaint has been signed and instituted by duly authorized person?*
- 2. Whether the suit is bad for misjoinder of parties?*
- 3. Whether loan was not taken by the defendant no. 1 but was taken for and on behalf of M/S P.S. Jain Motors? If so, its effect?*
- 4. Whether the suit of the plaintiff is barred by the time in view of letter dated 29th January, 1983?*
- 5. Does the execution of letter dated 31.5.1988 by defendants no. 4 and 5 absolves defendants no. 1 and 2 of their liability under the suit transaction?*
- 6. Whether the defendant no. 3 is not bound by the personal guarantee executed by him?*
- 7. To what amount the plaintiff is entitled and from which of the defendants?*
- 8. To what rate of interest the plaintiff is entitled to pendent lite and future?*
- 9. Relief.”*

7. From the side of the plaintiff bank two witnesses were examined while from the side of defendants no.1 and 2 only defendant no.1 appeared in the witness box. No evidence was adduced on behalf of defendants no. 3 to 5 who, in fact, had stopped appearing in the case after framing of the issues. The trial Court after examining the evidence adduced by the plaintiff bank and defendants no.1 and 2 rejected all the defences raised by the defendants in opposition to the plaintiff's claim in the suit and vide judgment under challenge decreed the suit in favour of the plaintiff bank and against all the defendants as had been prayed for in the plaint. Defendants No. 1 and 2 only felt aggrieved with the trial Court's judgment and filed the present appeal while defendants 3 to 5 have not challenged the trial Court's verdict against them.

8. Mr. S.K. Puri, learned senior counsel appearing for the appellants did not challenge the findings of the trial Court on issues no.1 and 2. I have in any case gone through the findings of the trial Court on these two issues and I have also found no infirmity in the trial Court's findings and, therefore, the same are affirmed.

9. Issue no. 3 is in respect of the plea of defendants no.1 and 2 to the effect that the loan was taken by them not for themselves but for the benefit and utilization by defendants no. 3 to 5, being run and managed by one Mr. Ramesh Jain and also that facility was extended in their names with the clear understanding with the bank that loan would be repayable

only by that Mr. Ramesh Jain and defendants no. 3 to 5. This issue was also decided by the trial Court in favour of the plaintiff. The findings on this issue were challenged by the learned senior counsel for the appellants. However, on going through the evidence adduced by the contesting parties and the findings of the trial Court on this issue I do not find any substance in the challenge thereto. It was admitted by defendants no.1 and 2 that they had applied for grant of cash credit facility to the erstwhile Traders' Bank Ltd. and their request had been accepted also and cash credit facility of ₹ 5 lakhs for a period of six months was sanctioned on 2nd January, 1981 and that various loan documents were also executed by defendant no. 1 in favour of the Traders' Bank. It was also admitted case of defendants no. 1 and 2 that vide their letter dated 8th January, 1983(Ex.P-8) they had acknowledged that a sum of ₹ 6,79,815.40 was due from them in their cash credit account on 31st December, 1982. Thus, up to 8th January, 1983 these defendants had not claimed that they themselves were not the real beneficiaries of the cash credit facility sanctioned by the Traders' Bank Ltd. and that in fact Ramesh Jain, one of the Directors in that bank, and his Group of Companies (defendants no. 3-5) were the real beneficiaries or that defendant no.1 had only lent his name for getting the credit facility from the Traders' Bank Ltd. for Mr. Ramesh Jain and his Group of Companies. Defendants no. 1 and 2 had, however, subsequently taken the stand in their letters dated 29th January, 1983, 9th September, 1983 and 5th

March,1986 addressed to the Traders' Bank Ltd. that they were not liable to pay any money since they were advanced loan to accommodate defendant no.5 Company which was its valuable client. The Traders' Bank had denied these defendants' claim made in their three letters that they had no connection with the grant of loan of ₹ 5 lakhs and it was conveyed to them that even if they had lent their names as was being claimed by them they still continued to be liable to clear the Bank's dues. On this aspect of the matter there is only the statement of defendant no.1 but that statement shows that he had during his evidence given up his stand taken in the written statement. He had deposed that one Mr. Ramesh Jain, who was one of the Directors of the Traders' Bank and was also a partner in defendant no.4 and a director in defendant no.5, was his good friend and a client also and that Mr. Jain had approached him with a request that since he wanted a loan of ₹ 5 lakhs from the Traders' Bank Ltd. he should take the loan in his name for a period of six months and Mr. Jain had also assured at that time that the loan shall be discharged within six months. DW-1 further deposed that he had accepted the request of Mr. Ramesh Jain and on his request loan of ₹ 5 lakhs was given for six months to him(DW-1) by Traders' Bank against the security of his shares. He had further deposed that Mr. Ramesh Jain had taken a cheque of ₹ 5 lakhs in the name of M/s P.S. Jain Motors Ltd.(defendant no. 5) and one cheque of ₹3,90,000 from his cash credit account. Thus in this statement of

defendant no.1 it was not claimed by him that the loan was sanctioned in his name by the Traders' Bank with the clear understanding that the liability to repay the loan was to be of Ramesh Jain and defendants no. 3-5. In his evidence DW-1 had also deposed that he had informed the bank that in view of the liability having been taken over by defendants no. 3-5 he would no longer be liable to the bank. It is common case of all the parties that defendants no. 3 to 5 had stepped in only in May, 1988 and had assured the plaintiff bank that they would be clearing the outstanding dues in the account of the defendants 1 and 2. Thus, the plea taken by the defendants no. 1 and 2 in their evidence is not consistent with the stand taken by them in their written statement that there was an understanding with the bank that the loan would be repayable by Ramesh Jain and his Group of Companies even though it had been sanctioned in the name of defendant no. 2 Raja Ram Bhasin & Co. In fact, the above referred statement of DW-1 is a clear admission on his part that the loan was taken by him. It was irrelevant whether it was taken at the request of some Mr. Jain who has not even been produced by defendants no. 1 & 2 in support of their case. In any event, even if the loan had been taken by defendants 1 and 2 on somebody's request that would not debar the bank from recovering its dues from them and even if defendant no.1 had claimed in his evidence that there was some kind of understanding with the Traders' Bank that the loan would be repayable by Ramesh Jain and defendants 3-5

that statement would not have made any difference in view of the various loan documents(Ex. P-1 to P-6) proved on record by the plaintiff which admittedly had been executed by defendants 1 and 2 in favour of Traders' Bank Ltd. and in which nowhere it had been stated that the loan would be repayable not by the executants of those documents but by defendants 3-5 and Ramesh Jain. Therefore, the defence of defendants 1 and 2 has been rightly rejected by the learned trial Judge. Learned senior counsel for the appellants only drew my attention to that part of the findings on issue no.3 where the trial Judge had observed that the defence of these defendants appeared to be probable. There is no doubt that the trial Judge had observed so while deciding issue no.3 but that observation is of no help to the appellants since finally it was concluded by the trial Judge that these defendants had failed to establish their defence and with that conclusion I am in full agreement.

10. Issue no.4 is in respect of the plea of the defendants that the suit of the plaintiff was in any case time barred. The trial Court has decided this issue also in favour of the plaintiff bank. Learned senior counsel for the appellants had submitted that since the appellants had disowned their liability totally way back in the year 1983 vide their letter dated 29th January,1983 the bank was bound to file the suit for recovery of its dues within three years from that date but that was not done and the suit filed in the year 1990 was hopelessly barred by time. Learned senior counsel also

submitted that there was nothing on record to show that the appellants had either acknowledged their liability or had made any part payments in their cash credit account after they had written to the Traders' Bank Ltd. that they were not liable to pay any money to it since the real beneficiary of the credit facility sanctioned in their name was Ramesh Chand Jain and his Group of Companies. Consequently, plaintiff bank was not entitled to benefit of the provisions of Section 18 and 19 of the Limitation Act.

11. Mr. Pallav Saxena, learned counsel for the plaintiff, on the other hand, submitted that there was sufficient material produced by the plaintiff bank to show that defendants no. 1 and 2 had not only been admitting the jural relationship of creditor and debtor with the plaintiff bank but had also been making part payments towards the discharge of their liability from time to time and those payments had been extending commencement of period of limitation. Learned counsel submitted that last payment made by defendants no. 1 and 2 was on 22nd August, 1987 and, therefore, the suit filed on 21st August, 1990 was within the period of limitation. In support of the submission that defendants no. 1 and 2 had been making part payments from time to time in their cash credit account even after claiming that the loan was taken for the benefit of Mr. Ramesh Jain and his Group of Companies, learned counsel for the plaintiff bank relied upon the statement of account in respect of appellants' cash credit account No.84

copy of which duly certified under the Bankers' Books Evidence Act 1891 was proved as Ex. PW-1/2.

12. It is common case of the parties that defendants no. 1 and 2 were given the credit facility for a period of six months from 2nd January, 1981 and so the period of limitation of three years commenced on the expiry of six months period. Admittedly, defendants 1 and 2 had vide their letter dated 8th January, 1983 acknowledged their liability towards the Traders' Bank Ltd. to the extent of ₹ 6,79,815.40. So, fresh period of limitation commenced from that date. Mr. Puri did not dispute the correctness of the credit entries made in the cash credit account of defendants no. 1 and 2 from time to time but it was his contention that most of those credits were by way of transfer of funds from the current account of defendant no. 5 (being CA no. 3092) and those transfer entries cannot entitle the plaintiff to the benefit of fresh period of limitation as provided under Section 19 of the Limitation Act since nothing has been produced on record by the plaintiff bank to show that those payments were made by defendant no. 5 from their current account as an agent of defendants no. 1 and 2 with their consent, knowledge and authorization. A perusal of the statement of account in respect of cash credit account no. 84 shows that on 20th November, 1984 a sum of ₹ 50,000 was transferred to that account from the current account of defendant no. 5. Then another sum of ₹ 50,000 was transferred from that account and credited to the account of

defendants no. 1 and 2 on 20th March, 1985. Another sum of ₹ 22,340 was credited to the account of defendants no. 1 and 2 by way of transfer of funds from the current account of defendant no. 5. Again on 7th October, 1985 a sum of rupees two lacs was transferred from the account of defendant no. 5 to the account of defendants no. 1 and 2. On 16th January, 1987 rupees two lacs were transferred from current account no. 3092 to cash credit account no. 84 of defendants no. 1 and 2. Finally, on 22nd August, 1987 a sum of ₹ 20,000 was transferred from the account of defendant no. 5 to the account of defendants no. 1 and 2. Now, the question is whether these transfer entries can be utilized by the plaintiff bank to get benefit of the provisions of Section 19 of the Limitation Act which provides that where some payment on account of some debt is made before the expiration of the prescribed period by the person liable to pay the debt or by his agent duly authorized in that behalf a fresh period of limitation shall be computed from the time when the payment was made.

13. Admittedly, in the present case the plaintiff bank is relying upon the payments made in the account of defendants no. 1 and 2 by way of transfer of funds from the account of defendant no. 5 to get the benefit of Section 19 of the Limitation Act. It is the case of defendants 1 and 2 themselves that defendants no. 3 to 5 were the concerns of one Mr. Ramesh Jain and that Mr. Ramesh Jain was a friend of defendant no. 1. It is also the case of the defendants no. 1 and 2 that the cash credit facility in question had

been taken by them on the request of Mr. Ramesh Jain. In these circumstances, the only inference which this Court can draw is that defendants no. 2 to 5 were all like family concerns and whatever payments were being credited in the account of defendants no. 1 and 2 by way of transfer of funds from the account of defendant no. 5 were, in fact, being made by defendant no. 5 on behalf of defendants no. 1 and 2 and that too with the authority of defendants no. 1 and 2 as otherwise there was no occasion whatsoever for defendant no. 5 permitting transfer of huge amount of money from its account for being credited in the account of defendants no. 1 and 2. Defendants no. 3 to 5 in their written statement had not claimed that they had no concern whatsoever with defendants no. 1 and 2 or that money transferred from the account of defendant no. 5 to the account of defendants no. 1 and 2 was without their knowledge or consent or that it had not been asked by defendants no. 1 and 2 to transfer money from its current account no. 3092 to cash credit account no. 84. Therefore, the plaintiff bank was entitled to get the benefit of commencement of fresh period of limitation every time money was transferred from the account of defendant no. 5 to the account of defendants no. 1 and 2. It was not disputed by the learned senior counsel for the appellants that if the transfer of money from the account of defendant no. 5 to that of defendants no. 1 and 2 is held to be a payment made for and on behalf of defendants 1 and 2 and with their authority then

the suit filed on 21st August, 1990 would not be time barred. Consequently, I hold that the suit filed by the plaintiff bank on 21st August, 1990 was not time barred and the learned trial Court has also rightly held so.

14. Now, I come to the challenge to the trial Court's findings against defendants no. 1 and 2 in respect of issue no. 5. It was contended by the learned senior counsel for the appellant that even if the suit is held to have been filed within the period of limitation because of the payments of money in the account of defendants no. 1 and 2 by way of transfer of funds from the current account of defendant no. 5 (respondent no. 4 herein) even then the suit of the plaintiff bank is liable to be dismissed against defendants no. 1 and 2 at least since the moment defendants no. 3 to 5 wrote the letter dated 31st May, 1988 to the plaintiff bank offering to liquidate the outstanding dues of defendants no. 1 and 2 and the plaintiff bank accepted that offer and got a mortgage of land created in its favour in respect of some land owned by defendant no. 3 in district Faridabad a fresh contract came into existence between the plaintiff bank and defendants no. 3 to 5 whereby defendants no. 1 and 2 stood absolved of the liability to clear the bank's dues under the cash credit account no. 84. Learned senior counsel argued that this is a case of novation of contract and defendants no. 1 and 2 are, therefore, entitled to the benefit of the provisions of Section 62 of the Indian Contract Act whereunder it is

provided that if the parties to a contract agree to substitute a new contract for it or to alter it the original contract need not be performed. In support of this argument, learned senior counsel cited one judgment of the Supreme Court in ***“Satish Chandra Jain vs. National Small Industries Corpn. Ltd. and Ors.”***, ***AIR 2003 SC 623*** and one judgment of Kerala High Court reported as ***AIR 1998 Kerala 31***.

15. On the other hand, learned counsel for the plaintiff bank argued that there was no novation of contract between the plaintiff bank and defendants no. 1 and 2 at any time and even defendants no. 3 to 5 had at no stage represented to the plaintiff bank that defendants no. 1 and 2 would stand absolved of their liability to clear the bank’s dues in their cash credit account upon defendants no. 3 to 5 agreeing to regularize their cash credit account. Learned counsel contended that all that defendants no. 3 to 5 did was to give an offer to the plaintiff bank to give guarantee for the repayment of dues by defendants no. 1 and 2 and even the agreement dated 6th October, 1988 executed by defendant no. 3 clearly stipulated that it was only guaranteeing the repayment of the bank’s dues payable by defendants no. 1 and 2 and nowhere in that agreement also it was agreed between defendant no. 3 and the plaintiff bank that with the execution of that agreement defendants no. 1 and 2 would stand absolved of their liability to clear the dues of the bank or that the plaintiff bank will not recover any money from defendants no. 1 and 2 because of defendants no. 3 to 5

having agreed to secure the bank's money due from defendants no. 1 and 2.

16. I am in full agreement with the aforesaid submissions made by the learned counsel for the plaintiff bank and do not find any merit in the plea of novation of contract taken on behalf of defendants no. 1 and 2. Plaintiff bank was concerned with recovery of its money and since defendants no. 3 to 5 had offered to secure the bank's money due from defendants no. 1 and 2 it could have very well accepted the guarantee of defendants no. 3 to 5 which it did. Because of the guarantee given by defendants no. 2 to 5, of which fact defendants no. 1 and 2 were not aware, the account of defendant no. 5 was being debited for different sums and defendants no. 1 and 2 were given the credit for those amounts in their cash credit account from time to time and because of those transfer entries having been made from the account of defendant no. 5 it cannot be said that plaintiff bank had given up its right to recover its dues from defendants no. 1 and 2 as the principal borrowers. Learned senior counsel for the appellant had also contended that the novation of contract should be inferred also from the fact that the shares of defendant no. 1 which had been kept with the bank as security had been returned to him which would not have been done if the plaintiff was to recover its money from defendants no. 1 and 2. There is no doubt that in the plaint itself the plaintiff had pleaded that the shares which had earlier been deposited by defendant no. 1 were returned back

but at the same time it had also been pleaded that those shares had been substituted with new shares of different companies. In any case, defendant no. 1 had claimed in his evidence that the shares which he had deposited with the bank as security were returned to him in July, 1981. Therefore, defendant no. 1 had got back his shares many years before defendants no. 3 to 5 had stepped in to guarantee the repayment of bank's dues in the account of defendants no. 1 and 2 and so it cannot be said that return of shares to defendants no. 1 and 2 in July, 1981 amounted to a novation of contract between the erstwhile Traders' Bank and these two defendants. Therefore, findings of the learned trial Court on this issue are also affirmed.

17. Issue no. 6 has also been decided in favour of the plaintiff and against defendant no. 3. The findings of the learned trial Court on this issue have not been challenged by defendant no. 3 by filing any appeal. The learned trial Court had rejected the defence that the guarantee agreement dated 6th October, 1988 had been got executed by the plaintiff bank under coercion. Since there was no evidence adduced by defendants no. 3 to 5 to substantiate their stand that they were coerced to execute letters and guarantee agreement showing that they had themselves offered to guarantee the repayment of money due to the bank from defendants no. 1 and 2 there is no infirmity in the trial Court deciding this issue in favour of the plaintiff.

18. Finally, learned senior counsel for the appellants relying upon a judgment of Bombay High Court reported as *AIR 1992 Bombay 482* had submitted that since in the plaint it had not been stated as to what was the principal amount and what was the interest amount out of the total suit amount the suit was liable to be dismissed on this ground also. Learned counsel for the plaintiff on the other hand cited a judgment of the Supreme Court in the case of “*Central Bank of India vs. Ravindra & Ors.*”, (2002) *1 SCC 367* and contended that the decision of Bombay High Court relied upon by the appellants had been overruled by the Supreme Court in the said judgment and it had been held that parties could voluntarily enter into transactions and agree to payment of compound interest and authorizing the creditor to capitalize the interest and that once interest is capitalized it becomes a part of the principal so as to bind the borrower. Faced with this judgment, the learned senior counsel for the appellant did not advance any further submissions on this aspect and in my view rightly so because in the present case also defendants no. 1 and 2 had agreed to pay interest to the plaintiff bank @ 20 ½ % p.a. on the daily balance of the cash credit account and it was also agreed that the interest so charged shall form part of the principal.

19. In the result, this appeal being devoid of any merit is dismissed with costs.

December , 2010/sh

P.K. BHASIN,J