

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.07.2026
Pronounced on	19.08.2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN**AND****THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI****OSA No. 473 of 2018****AND****CMP NO. 22510 OF 2018**

Union Bank Of India

Rep By Its Chief Manager, No.152, Mount Road,
Chennai 600 002

..Appellant(s)

Vs

1. Patanjali Foods Limited
Formerly Known As (*)
Ruchi Soya Industries Limited,
Ruchi House, Royal Palms,
Survey No. 169,Aarey Milk Colony,
Near Mayur Nagar,
Goregaon (east),
Mumbai,Maharashtra,
India 400065
(r1 Amended As Per Order Of Court Dated
02.02.2026 Made In Cmp.2299 Of 2026 In Osa.
473 Of 2018 Cvkj And Kbj
2. P.Venkatesalu
Proprietor, Sri Balaji Enterprises, No.9,
M.G.Road, Kumaran Nagar, Padi, Madras
600 050

..Respondent(s)

Prayer: The Original Side Appeal is filed under Order 36 Rule 1 of the Original Side Rules R/W Clause 15 of the Letter Patents Act, to set aside the judgment and decree dated 28.06.2018 passed in C.S.No.132 of 2005.



WEB COPY

OSA No. 473 of 2



OSA No. 473 of 2018

For Appellant(s): Mrs.Chira Sampath, Senior Advocate
for M/s.Nvs & Associates
of M/s.NVS & Associates

For Respondent(s): MR.V.Raghavachari, Senior Counsel
Assisted by Ms.R.V. Gayatri
Mr.P.B.Ramanujam for R1
R-2 -No appearance

Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

The Original Side Appeal is filed to set aside the judgment and decree dated 28.06.2018 passed in C.S.No.132 of 2005.

Facts:

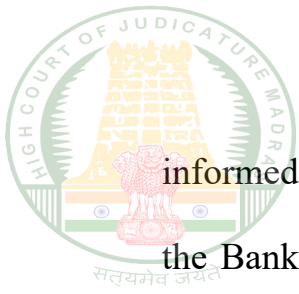
2.The Plaintiff is a supplier of Palmolein oil, carrying on business at Chennai within the jurisdiction of this Hon'ble Court. The 2nd Defendant approached the Plaintiff with a request to supply specified quantities of Palmolein oil on credit basis. Considering the nature of the transaction and the credit facility sought, the Plaintiff insisted upon adequate security. Pursuant thereto, the 2nd Defendant caused the 1st Defendant Bank (Appellant herein) to issue an irrevocable Bank Guarantee bearing No. 179/2001 dated 11.02.2002 in favour of the Plaintiff. The said Bank Guarantee was valid for the period from 11.02.2002 to 10.02.2003 and secured the credit facility extended by the Plaintiff, up to a maximum sum of Rs. 25,00,000/-, The guarantee constituted an independent and binding obligation on the 1st Defendant Bank to honour its



commitment upon invocation. Acting on the strength of the said Bank Guarantee and the assurances extended, the Plaintiff supplied Palmolein oil to the 2nd Defendant from time to time and raised invoices in respect thereof. The details of the invoices are set out below:

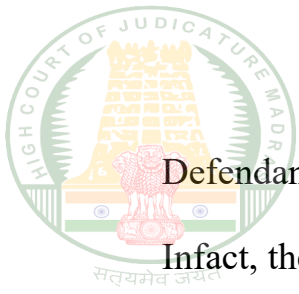
S.No.	Date	Amount
1.	08.04.2002	3,10,990/-
2.	08.04.2002	3,08,149/-
3.	12.04.2002	3,15,283/-
4.	12.04.2002	3,02,555/-
5.	13.04.2002	3,03,899/-
6.	13.04.2002	3,18,295/-
	Total	Rs.18,59,171/-

Towards discharge of the amounts due under the aforesaid invoices, the 2nd Defendant issued cheques in favour of the Plaintiff. However, upon presentation, all the said cheques were dishonoured and returned with endorsements stating "Exceeds Arrangements" and "Insufficient Funds". In view of the default committed by the 2nd Defendant, the Plaintiff invoked the Bank Guarantee by approaching the 1st Defendant Bank. The Plaintiff's representatives submitted a covering letter along with the original Bank Guarantee to the Branch Manager of the 1st Defendant Bank, one Mr. Kamarudeen. Shockingly, instead of honouring the unconditional Bank Guarantee, the Plaintiff's representatives were asked to wait outside the Manager's cabin. After a prolonged wait of nearly two hours, they were



informed that the Manager had left the premises. The Manager did not return to the Bank for the next two days, and no response whatsoever was given to the Plaintiff's request. It is submitted that the 1st Defendant Bank, being bound by the terms of the Bank Guarantee, was legally obligated either to honour the same or communicate its decision to dishonour the Guarantee, in accordance with law. The complete inaction and evasive conduct on the part of the Bank is arbitrary, unlawful, and contrary to settled banking principles. Left with no alternative, the Plaintiff issued a legal notice dated 07.05.2002 to the 1st Defendant Bank and another notice dated 10.05.2002 to the 2nd Defendant calling upon them to make payment. The 1st Defendant Bank sent a reply dated 16.05.2002 containing false and untenable allegations, seeking to evade its liability under the Bank Guarantee. In view of the unjustified refusal on the part of the 1st Defendant Bank, the Plaintiff was constrained to approach the Banking Ombudsman by lodging a complaint on 21.05.2002.

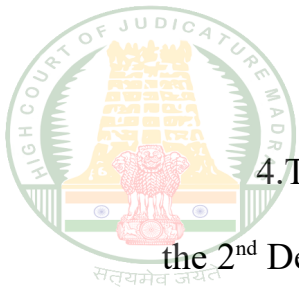
3. While the said complaint was pending, the 2nd Defendant, at the instigation of the 1st Defendant Bank, filed W. P. No. 30011 of 2002 before this Court. This Court, by order dated 19.02.2003, disposed of the writ petition directing that the 2nd Defendant be given an opportunity to participate in the proceedings before the Banking Ombudsman. Not satisfied with the same, the 2nd Defendant preferred W.A. No. 1603 of 2003, which also came to be disposed of. The entire sequence of events demonstrates a concerted attempt on the part of the



Defendants to jointly delay and defeat the legitimate claim of the Plaintiff.

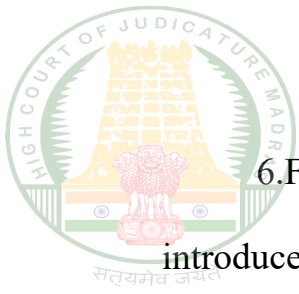
Infact, the complaint before the Banking Ombudsman pertained to the unilateral

and illegal cancellation of the Bank Guarantee by the 1st Defendant Bank, acting in collusion with the 2nd Defendant, to the grave prejudice of the Plaintiff. The present suit has been instituted well within the period of limitation and within the jurisdiction of this Court. The pendency of proceedings before the Banking Ombudsman does not operate as a bar to the institution of the present suit, which is one for recovery of money lawfully due. The Plaintiff has sought recovery of a sum of Rs. 18,59,171/- towards the principal amount, jointly and severally from the Defendants, by invoking the Bank Guarantee, which is an irrevocable and unconditional instrument. The conduct of the 1st Defendant Bank in failing to honour the Bank Guarantee is arbitrary, illegal, and indicative of collusion with the 2nd Defendant. The Plaintiff had duly supplied the goods, which were accepted by the 2nd Defendant without any demur as to quality or quantity. The liability of the 2nd Defendant as the principal debtor and the 1st Defendant Bank as guarantor is joint and several. The Plaintiff is therefore entitled to recover the suit claim from both Defendants. While the Plaintiff is also entitled to interest at the rate of 21% per annum from May 2002, being the date of the last cheque issued by the 2nd Defendant, till the date of realisation.



4. The claim of the Plaintiff was resisted by the 1st Defendant stating that the 2nd Defendant is its constituent and had been availing various credit facilities from it. One such facility, according to the 1st Defendant, culminated in the issuance of the subject Bank Guarantee for a maximum sum of Rs. 25,00,000/- in favour of the Plaintiff, valid from 11.02.2002 to 10.02.2003. It is the case of the 1st Defendant that though the Bank Guarantee was issued at the instance of the 2nd Defendant, the Plaintiff had allegedly not confirmed its acceptance of the same.

5. The 1st Defendant further states that on 02.05.2002, the 2nd Defendant returned the original Bank Guarantee along with a covering letter dated 30.04.2002 requesting cancellation of the said guarantee and release of the margin money. Acting upon such request, the 1st Defendant claims to have cancelled the Bank Guarantee in the normal course of its business. The 1st Defendant categorically denies having received the original Bank Guarantee or any invocation request from the Plaintiff. It disputes the Plaintiff's case that its representatives approached the Bank for encashment of the guarantee upon dishonour of the cheques issued by the 2nd Defendant. The 1st Defendant also denies the allegation that its Branch Manager, Mr. Kamarudeen, had received the Bank Guarantee from the Plaintiff's representatives and thereafter failed to act upon the same.



6. Further, it is contended that the said allegations are false and have been introduced as an afterthought. According to the 1st Defendant, Mr. Kamarudeen was not the final authority to decide claims under the Bank Guarantee, and that the Bank's functioning is structured with multiple officials, including a Chief Manager and other supervisory officials. It is further contended that the Plaintiff's alleged attempt to invoke the Bank Guarantee is not genuine and pertains to a non-existent or already cancelled instrument, and hence no liability can arise thereunder. The 1st Defendant asserts that the Bank Guarantee was not an irrevocable instrument and that its cancellation was effected in the ordinary course of business upon the request of the 2nd Defendant. On the above premises, the 1st Defendant contends that it was under no obligation to honour any claim under the said Bank Guarantee and that there exists no cause of action as against it. The 1st Defendant therefore seeks dismissal of the suit for the reasons stated above.

7. Despite, summons served, the 2nd defendant remained absent and was set ex-parte.

8. The issues framed by the learned Single Judge as hereunder:

1. Whether the 1st Defendant Bank, furnished irrevocable Bank Guarantee bearing No. 179 of 2001 dated 11.02.2002, at the instance and on behalf of the 2nd Defendant, in favor of the Plaintiff?



WEB COPY

2. *Whether the 1st Defendant handed over the said original Bank Guarantee to the 2nd Defendant, who subsequently requested the Bank to cancel the said Bank Guarantee and accordingly, whether 1st Defendant cancelled it legally?*

3. *Whether the Plaintiff handed over the Bank Guarantee to the 1st Defendant for encashment as per law ?*

4. *Whether the Plaintiff, within the time stipulated in the Bank Guarantee, exercised its option to enforce and encash the Bank Guarantee?*

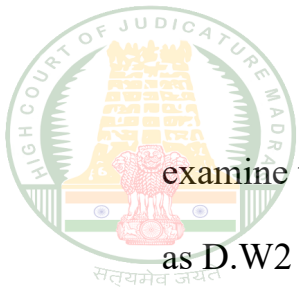
5. *Whether the cheques issued by the 2nd Defendant in favour of the Plaintiff were all dishonoured on various dates and thereby paving the way for invoking the said Bank Guarantee?*

6. *Whether the Plaintiff is entitled to recover the suit amount of Rs. 29,00,306.75?*

7. *Whether the Plaintiff is entitled to recover interest at the rate of 21% p.a. on Rs. 18,59,171/- from the date of Complaint till date of decree and thereafter also at the same rate till the realization ?*

8. *To what relief is the Plaintiff entitled ?*

8. During trial, the plaintiff examined the Manager as P.W.1 and marked as Exhibits EX.P.1 to P.24 and on the side of the defendants, 1st defendant Bank



examine the Chief Manager Mrs.Rekha as D.W.1 and Manager Mr.Kamarudeen as D.W2 and marked as Exs.D.1 to D.9.

WEB COPY

9.Based on the pleadings, evidence and submissions made by the respective counsel for the parties, the learned Single Judge decreed the suit with costs.

10.Aggrieved by this, the present appeal is preferred.

11.For the sake of convenience the parties are referred as per the ranking in the trial Court.

12.Mrs. Chitra Sampath, learned Senior counsel for the appellant/1st defendant would submit that even though the bank guarantee was issued by the 1st defendant to the 2nd defendant, the same was not received by the plaintiff and the plaintiff has failed to accept the same. No written communication whatsoever from the plaintiff regarding the acceptance of the bank guarantee or acknowledging the receipt of the same and the 1st defendant in view of the letter of the 2nd defendant, acted as per the instructions of the 2nd defendant and accordingly cancelled the guarantee as per prevailing bank practice. Her further contention is that as per Section 126 of the Contract Act, bank guarantee is a contract to perform the promise and under Section 2(b) of the Contract Act,



only when the proposal made by the 1st defendant Bank is accepted, it becomes promise and that when the plaintiff failed to accept the bank guarantee, it does not constitute a binding contract. Hence, in the absence of acceptance on the part of the plaintiff, there is no concluded contract between the plaintiff and the 1st defendant and the 1st defendant is not bound to honour the bank guarantee.

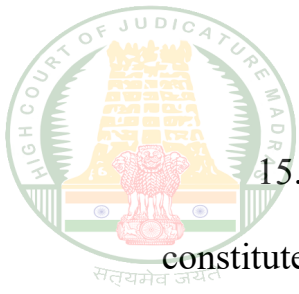
Further, she would submit that neither the plaintiff nor his employees ever visited the branch office of the 1st defendant and handed over the alleged bank guarantee or letter of invocation. The evidence of D.W.2 would establish the above fact and the same was not rebutted. Therefore, in the absence of substantiating and proving the above facts, the onus could not have shifted on the 1st defendant. She would further submit that the original bank guarantee were in fact received only from the 2nd defendant who had handed over the original bank guarantee along with the letter dated 30.04.2002 directing the 1st defendant to cancel the same.

13. Her further contention is that, a bank guarantee being an independent contract between the bank and the beneficiary, there was not consensus *ad idem* in view of the fact that the offer of the 1st defendant never culminated into an unequivocal acceptance on the part of the plaintiff. The plaintiff, therefore, did not comply with the requirement of the 1st defendant that the plaintiff should confirm the receipt of acceptance of the guarantee and that this fact is further evident from the fact that the receipt of the bank guarantee was never proved by



the plaintiff. While so, the learned Single Judge without considering the above factors has arrived at the conclusion that the guarantee issued by a Bank will have to be honoured, irrespective of any dispute between the beneficiary of the guarantee and the party on whose behalf it was issued. Such a conclusion completely disregarded the surrounding factual circumstances and crucial evidence, including the well established principle that the initial burden of proof always lay with the plaintiff. Hence, prayed for setting aside the judgement and decree passed by the trial Court.

14. On the other hand, Mr.V.Raghavachari, learned Senior counsel for the 1st respondent /plaintiff would contend that the bank guarantee is irrevocable guarantee and the 1st defendant bank undertook and promised to pay the amount due from the 2nd defendant to the plaintiff subject to the guarantee amount as stated above without any demur merely on demand from the plaintiff and the 2nd defendant is liable to pay a sum of Rs. 18,59,171/- towards supply of palmolein and in order to discharge the above liability, the 2nd defendant had issued separate cheques for each supply, totalling to a sum of Rs.18,59,171/- drawn in the 1st defendant bank, but all the above cheques were returned on presentation for collection with an endorsement “exceeds arrangements and insufficient funds”. Since the 2nd defendant did not come forward to settle his liability, the plaintiff has invoked the bank guarantee.



15.He would further submit that the bank guarantee dated 11.02.2002 constitutes an unconditional and irrevocable financial instrument, creating an independent and absolute obligation on the part of the 1st defendant bank to honour its commitment in favour of the plaintiff upon invocation.

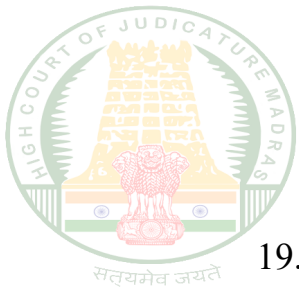
16.He would further submit that the Hon'ble Supreme Court in ***U.P.State Co-operative Federation Ltd., Vs. Singh Consultants and Engineers (Private Ltd.)***, reported in ***(1988) 1 SCC 174***, has authoritatively held that a bank must honour its guarantee free from interference, except in cases of established fraud or irretrievable injustice of an exceptional nature and that this principle has been consistently reiterated in subsequent decisions, including ***Svenska Handelsbanken V. Indian Charge Chrome Ltd.***, reported in ***(1994) 1 SCC 502***, wherein the Court emphasised that the sanctity of bank guarantees underpins commercial transactions, and any dilution of this principle would irreparably damage commercial confidence. Further he would submit that, in ***Himadri Chemicals Industries Ltd., Vs. Coal Tar Refining Co.***, reported in ***(2007) 8 SCC 110***, the Hon'ble Supreme Court crystallised the governing principles by holding that bank guarantees are independent contracts and must be honoured strictly in terms thereof, save in narrowly defined exceptional circumstances.

17.In the present case, the 1st defendant bank has not even attempted to bring its defence within the recognised exceptions to enforcement. In the



absence of such exceptional circumstances, the refusal of the bank to honour the guarantee is plainly contrary to the settled law and constitutes a breach of its independent contractual obligation. His further submission is that the liability of the 2nd defendant stands conclusively established. The 2nd defendant has never disputed the supply of goods nor raised any objections to the invoices. In such circumstances, the learned counsel would submit that, the 1st defendant Bank, whose obligation is purely that of a guarantor, cannot be permitted to raise objections that the principal debtor itself has not raised.

18. He would further contend that a bank guarantee, once issued in favour of a beneficiary and expressed to be irrevocable, cannot be unilaterally cancelled by the issuing bank during its subsistence, particularly at the instance of the principal debtor, without notice to the plaintiff. It is further submitted that the original bank guarantee was submitted to the bank at the time of invocation. Though the 1st defendant bank denied such receipt, the same cannot defeat the plaintiff's claim when the foundational facts of issuance and terms are admitted. Further, the guarantee being unconditional does not prescribe any rigid format for invocation, nor does it make its enforceability contingent upon formal acceptance by the beneficiary. The law is well settled that once a guarantee is issued and communicated to the beneficiary, it becomes enforceable according to its terms and that the liability of the 1st defendant bank as guarantor is co-extensive with that of the principal debtor, subject to the terms of the guarantee.



WEB COPY

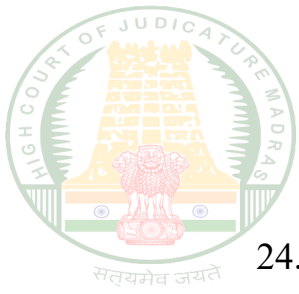
19.He would further contend that the invoices issued by the plaintiff expressly stipulate that delayed payments would attract interest at the rate of 21% per annum. Having contributed to the delay, the bank cannot now seek to avoid the contractual rate of interest.

20.The learned Single Judge has, upon a detailed appreciations of pleadings, oral evidence, and documentary material, arrived at well reasoned findings, warrants any interference by this Court.

21.Heard on both sides and records perused.

22.This original side appeal is directed against the judgment and decree passed by the learned Single Judge decreeing the suit filed by the plaintiff, the 1st respondent herein against the appellant - bank and the 2nd respondent/2nd defendant for recovery of the amount covered by the bank guarantee.

23.The plaintiff is engaged in the business of supplying palmolein. The 2nd defendant purchased palmolein from the plaintiff on credit basis. As security for the credit facility extended by the plaintiff to the 2nd defendant, at the request of the 2nd defendant, the appellant - bank issued a bank guarantee in favour of the plaintiff for a maximum sum of Rs.25,00,000/-.



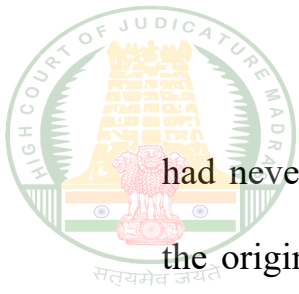
WEB COPY

24.The bank guarantee was valid for a period of one year, namely, from 11.02.2002 to 10.02.2003. The material terms of the guarantee contemplated payment by the bank upon demand, notwithstanding any dispute between the plaintiff and the 2nd defendant.

25.The plaintiff continued to supply goods to the 2nd defendant relying upon the security afforded by the bank guarantee. Subsequently, the cheques issued towards payment were dishonoured with the endorsement “exceeds arrangement” and “insufficient funds”. The plaintiff therefore approached the bank on 30.04.2002 and, according to the plaintiff, submitted a covering letter expressing its intention to invoke the bank guarantee and handed over the original bank guarantee to the branch manager, one Kamarudeen.

26.It is the plaintiff’s further case that the branch manager left the bank without responding to the request. The plaintiff thereafter issued notices dated 07.05.2002 to the defendant. The plaintiff also lodged a complaint before the Banking Ombudsman on 21.05.2002 alleging unilateral cancellation of the bank guarantee by the bank in collusion with the 2nd defendant.

27.To the contrary, the appellant – bank denied that the plaintiff had invoked the bank guarantee on 30.04.2002. It was contended that the plaintiff



had never confirmed acceptance of the bank guarantee and that, in any event, the original bank guarantee had been handed over by the 2nd defendant to the bank on 30.04.2002 along with a covering letter, requesting cancellation of the guarantee.

28.The bank has specifically denied receipt of the original bank guarantee from the plaintiff and denied that any request for invocation had been made by the plaintiff.

29.It was further contended that the guarantee was not irrevocable and that, by the time the plaintiff purportedly sought to invoke it, there was no subsisting bank guarantee. According to the bank, the plaintiff therefore had no cause of action against the bank.

30.The 2nd defendant, though duly served with suit summons, remained absent and was set ex-parte.

Points for consideration:

1.Whether the plaintiff established a valid invocation of the bank guarantee on 30.04.2002?

2.Whether the alleged cancellation of the bank guarantee at the



instance of the 2nd defendant was effective against the plaintiff?

3. Whether the appellant – bank was justified in refusing to honour the guarantee?

4. Whether the judgment and decree of the learned Single Judge require interference?

Point Nos.1 to 4

31.The law relating to bank guarantees is well settled. A bank guarantee constitutes an independent contract between the bank and the beneficiary. In ***U.P.Co-operative Federation Ltd., Vs. Singh Consultants and Engineers (P) Ltd.***, reported in (1988) 1 SCC 174, the Hon'ble Supreme Court emphasis the independent nature of the bank's obligation and held that an irrevocable bank guarantee ordinarily has to be honoured in accordance with its terms.

32.The Hon'ble Supreme Court has repeatedly reiterated that in commercial transaction, the bank is not concerned with disputes between the beneficiary and the person at whose instance the guarantee was issued. The bank must honour an unconditional guarantee when a demand is made in accordance with its terms. The recognised exceptions are cases of established fraud going to the very foundation of the guarantee and cases of irretrievable injustice. The Hon'ble Supreme Court also emphasised, that the terms of the



bank guarantee are of paramount importance and that invocation must be in accordance with those terms. The bank and beneficiary are bound by the independent contract constituted by the guarantee.

33.The appellant's principal defence is that there was no invocation at all.

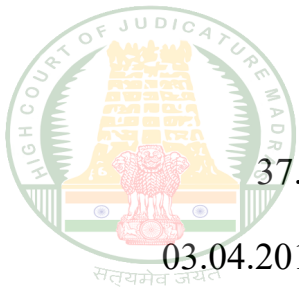
34.This contention has to be examined on the evidence. The guarantee was admittedly valid from 11.02.2002 to 10.02.2003. The plaintiff's case is that on 30.04.2002, upon dishonour of the cheques issued by the 2nd defendant, it approached the appellant – bank and made a demand under the guarantee. The date is significant. The alleged demand was made nearly 9 months before expiry of the guarantee. The plaintiff has also relied upon the subsequent notice dated 07.05.2002 and the complaint made before the Banking Ombudsman on 21.05.2002. These subsequent contemporaneous documents lend support to the plaintiff's case that it had, in fact, attempted to invoke the guarantee on 30.04.2002.

35.The appellant – bank, on the other hand, as relied upon the alleged letter of the 2nd defendant dated 30.04.2002 requesting cancellation of the guarantee. The learned Senior Counsel for the Appellant – Bank would contend that, P.W.1 in his evidence has stated that the original bank guarantee was with the plaintiff, but the same was filed only by the appellant – bank before this



Court, which would demonstrate that the plaintiff never received the bank guarantee as pleaded by the plaintiff and that it was only the 2nd defendant who handed over the original bank guarantee to the appellant – bank for cancellation. Further, the Chief Manager of the appellant – bank was not examined by the plaintiff, to establish the alleged incident that took place on 30.04.2002. Hence, the plaintiff cannot invoke the guarantee and claim the amount of bank guarantee, when the initial obligation always rest upon the plaintiff to conclusively establish before this Court that they had in fact received the guarantee and handed over the same to the appellant-bank on 30.04.2002.

36.This contention of the appellant – bank regarding non production of the original bank guarantee is devoid of merits. In fact, the bank guarantee marked as Ex.D2 was addressed only to the plaintiff. No copy was marked to the 2nd defendant. In such circumstances, the appellant-bank has to establish that how the original of Ex.D2 was produced by the 2nd defendant, which the appellant - bank failed to do so. In this regard, the principles of preponderance of probabilities applies. Only if the plaintiff ‘s case is appreciated to the effect that the document in Ex.D2 was handed over to the 1st defendant Bank Manager (Mr.Kamarudeen - D.W.2) along with the letter dated 30.04.2002 by the plaintiff, the question of the original finding its place with the appellant – bank through the 1st defendant’s hand becomes apparent.



37. Further, the evidence of D.W.2 Mr. Kamarudeen, recorded on 03.04.2013, strengthens the plaintiff's case, wherein he has stated in unambiguous terms which is extracted as hereunder:

“ The letter dated 30.04.2002 from the 2nd defendant was allegedly received on 02.05.2002.

There is no entry in the inward Tapal Register (Ex.D.3) evidencing such receipt by the Chief Manager.

The endorsement received 02.05.2002 was made by D.W.2 himself

He further endorsed instructions to cancel the bank guarantee and transfer amounts between accounts.

38. Further, the defence sought to be raised by the appellant – bank that Ex.P.2 guarantee, stood cancelled at the instance of the 2nd defendant is wholly untenable both in fact and in law.

39. The alleged cancellation requires close scrutiny. The bank guarantee was issued in favour of the plaintiff as security for the credit facility extended by the plaintiff to the 2nd defendant. The plaintiff was the beneficiary under the guarantee. Once the guarantee was issued in favour of the plaintiff and the plaintiff had acquired the right to invoke it in accordance with its terms, the 2nd defendant could not, without the consent of the beneficiary, unilaterally extinguish that right by merely requesting the appellant – bank to cancel the bank guarantee.

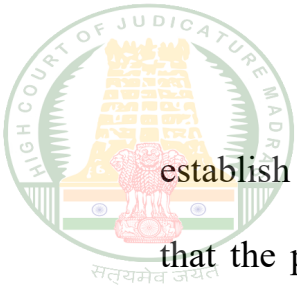


WEB COPY

40. In fact, the conduct of the Appellant – Bank is further exposed through its own evidence. The Chief Manager of the bank, examined as D.W.1 on 07.01.2013, categorically admitted which is extracted as hereunder:

“There is no record to show that the plaintiff was informed either before or after cancellation of the bank guarantee”

41. This admission is fatal to the bank’s defence. It unequivocally establishes that the alleged cancellation of the bank guarantee was effected unilaterally, without any notice whatsoever to the bank, the beneficiary of the under the bank guarantee. Such an act is not merely irregular, it is illegal and void. The cumulative effect of the oral and documentary evidence leads to an irresistible conclusion that there was collusion between the officials of the appellant-bank and the 2nd defendant, resulting in the wrongful cancellation of a valid and subsisting bank guarantee. Further, the appellant – bank has asserted a positive fact, namely, that the original bank guarantee was returned by the 2nd defendant along with the letter dated 30.04.2002 requesting cancellation of the bank guarantee. The 2nd defendant, who alone would have had direct knowledge of such alleged surrender, chose not to contest the suit. If the appellant – bank had in fact received the original guarantee from the 2nd defendant and cancelled it on 30.04.2002, it was incumbent upon the appellant – bank to establish the circumstances in which such cancellation took place and, more importantly, to



establish that the plaintiff's right as beneficiary had not already been invoked or that the plaintiff had consented to such cancellation. No convincing evidence has been brought before us to establish that the plaintiff consented to cancellation of the guarantee.

42. The appellant – bank, however, cannot rely merely upon the alleged request of the 2nd defendant when the plaintiff, the beneficiary, has specifically asserted that it invoked the guarantee on the same date. Further, the appellant - bank cannot place itself in a position where, on the one hand, it holds out a guarantee to the beneficiary and induces the beneficiary to act upon the security, while, on the other hand, permits the constituent to withdraw or cancel that security without notice to the beneficiary. The very commercial purpose of bank guarantee would be defeated if the constituent could privately cancel the guarantee after the beneficiary had acted upon it and had become entitled to invoke it.

43. Much emphasis has been placed upon the appellant's bank contention that the plaintiff did not confirm acceptance of the guarantee and that the original instrument was subsequently surrendered.

44. We are unable to accept that contention in the manner suggested.



45. The plaintiff's case is not founded merely upon an unaccepted offer of a guarantee. The guarantee was actually issued by the bank in favour of the plaintiff, and the plaintiff thereafter supplied goods to the 2nd defendant on credit relying upon the security. The subsequent conduct of the plaintiff, particularly the immediate approach to the bank after dishonour of the cheques, the notice dated 07.05.2002 and complaint before the Ombudsman, is consistent with the existence of an operative guarantee and an attempt to enforce it.

46. The appellant – bank also contended that the guarantee was irrevocable. The nomenclature used in the document is not decisive. What is relevant is the substantive obligation undertaken by the Bank. If the terms of the guarantee stipulate that the bank shall pay upon demand and notwithstanding any dispute between the beneficiary and the constituent, the bank's obligation is independent and cannot be avoided by reference to dispute arising out of the underlying transaction.

47. The Hon'ble Supreme Court in *Hindustan Construction Co. Ltd., Vs. State of Bihar*, reported in (1999) 8 SCC 436 reiterated that the bank must honour the guarantee according to its terms and that the underlying dispute ordinarily has no relevance to the bank's obligation.



48. Likewise, in *Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Co.*, reported in (2007) 8 SCC 110, the Hon'ble Supreme Court reiterated that the Courts should be slow to interfere with unconditional bank guarantees and that the bank's obligation is to be determined from the terms of the guarantee.

49. As rightly pointed out by the learned counsel for the plaintiff, the bank cannot impose conditions or requirements which are not contemplated by the terms of the guarantee itself. The defence that the plaintiff did not 'accept' the guarantee or comply with certain alleged procedural requirements has no legal basis. The guarantee being unconditional, does not prescribe any rigid format for invocation, nor does it make its enforceability contingent upon formal acceptance by the beneficiary. The law is well settled that once a guarantee is issued and communicated to the beneficiary, it becomes enforceable according to its terms. The bank cannot, by way of subsequent interpretation, introduce new condition or dilute its obligation.

50. The present case is not that where the plaintiff seeks an injunction restraining the bank from honouring a guarantee. Nor it is a case where the bank seeks protection against an invocation founded upon an extraneous or fraudulent demand. The plaintiff claims that it invoked the guarantee during its validity and that the bank wrongfully refused to honour it. The bank's obligation

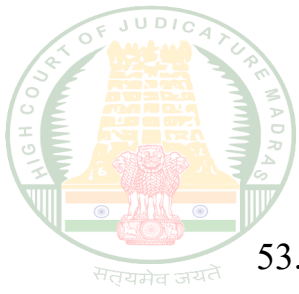


therefore has to be examined on the terms of the guarantee and on the question whether a valid demand was made.

WEB COPY

51. Indisputedly, the plaintiff has duly and validly invoked the bank guarantee within the period of its validity. The plaintiff has placed on record comprehensive documentary evidence establishing supply of goods, issuance and dishonour of cheques, and invocation of the bank guarantee. These documents have not been effectively rebutted by the defendants. The appellant bank has not discharged its burden of disproving the plaintiff's claim nor has it produced any cogent evidence to support its own defence.

52. Further, the invoices issued by the plaintiff expressly stipulate that delayed payment would attract interest at the rate of 21% per annum. This term forms part of the contractual arrangements between the plaintiff and the 2nd defendant. Once the bank has undertaken to guarantee payment obligations arising from that very transaction, it cannot selectively honour only the principal amount while disclaiming liability for agreed interest. As rightly pointed out by the learned Senior Counsel for the plaintiff, the obligation under the bank guarantee must be read in a commercially meaningful manner so as to give full effect to the underlying transaction. Therefore, the contention by the learned Senior Counsel for the appellant – bank that the interest rate of 21% per annum is usurious is wholly unsustainable.



WEB COPY

53.The learned Single Judge has considered the oral and documentary evidence and arrived at the conclusion that the plaintiff has established its entitlement against the appellant bank under the bank guarantee.

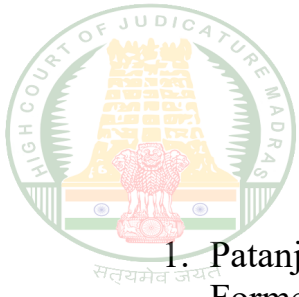
54.We find that the said conclusion is neither perverse nor contrary to the settled principles governing bank guarantee. The appellant - bank, having issued the guarantee in favour of the plaintiff and having undertaken to pay upon demand in accordance with its terms, cannot escape its liability by relying upon a unilateral request for cancellation allegedly made by its constituent, particularly when the beneficiary had already invoked the guarantee and had acted upon it.

55.In the result, the original side appeal is dismissed. The judgement and decree of the learned Single Judge are confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(P.V.,J.) (K.G.T.,J.)
19-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

VSN



1. Patanjali Foods Limited

Formerly Known As

Ruchi Soya Industries Limited,

Ruchi House, Royal Palms,

Survey No. 169, Aarey Milk Colony,

Near Mayur Nagar,

Goregaon (east),

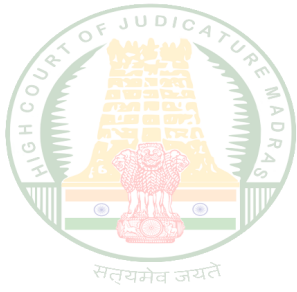
Mumbai, Maharashtra,

India 400065

2. P.Venkatesalu

Proprietor, Sri Balaji Enterprises, No.9, M.G.Road, Kumaran Nagar,

Padi, Madras 600 050



WEB COPY

OSA No. 473 of 2



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.**

VSN

Pre-delivery judgment made in

**OSA No. 473 of 2018
and
CMP NO. 22510 OF 2018**

19-08-2026