

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 67 OF 2016
WITH
CIVIL APPLICATION NO. 3447 OF 2015**

M/s. Punjab National Bank

... Appellant
(Ori.Deft.No.1)

vs.

The Jai Hind Plastics & ors.

... Respondents

Mr. Pankaj Viyayan i/by Indra Legal, Advocate for the appellant.
Mr. Arun Siwach a/w Mr. Jay Sanklecha i/by Cyril Amarchand
Mangaldas & Co., Advocate for respondent no.4.

Coram : Smt. R. P. SondurBaldota, J.

Date : 28th March, 2016.

P.C.

1. This appeal challenges the decree and order dated 6th December, 2014 passed by the trial Court under Order VIII Rule 10 C.P.C. because the appellant had failed to file written statement despite sufficient opportunity given to it. The suit filed by respondent no.4 was for recovery of the amount due from the appellant under two letters of credit, one with the limit of Rs.6,00,000/- and the other with the limit of Rs.12,00,000/-. Respondent no.4, the original plaintiff had led evidence in support of it's claim. Apart from the deposition of the witness of respondent no.4, the documents of hundis and the letter of protest on account of non-payment thereunder had been produced. After

appreciating all the documents the trial Court decreed the suit in its entirety.

2. Mr. Vijayan, the learned advocate for the appellant submits that the trial Court failed to correctly appreciate the facts of the case. He submits that respondent no.4 had not complied with the terms and conditions of the Letter of Credit. He argues that the letter of credit was contingent upon the negotiations and there is nothing on record to indicate that there were in fact negotiations. The submission needs to be rejected for the simple reason that this aspect of fact has been specifically considered at para 10 of the impugned judgment and decree. Respondent no.4 has produced evidence of dishonour of hundis by the appellant by way of letter of protest along with service of letter of protest on account of non-payment by the appellant. Therefore negotiations by respondent no.4 of the hundis will have to be presumed. In any case, since the appellant had not filed any written statement, it cannot be permitted to raise any question of dispute of facts. Hence, there is no substance in the appeal. The first appeal is dismissed.

3. In view of dismissal of the first appeal, Civil Application No. 3447 of 2015 does not survive. The same is accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]