IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO. 3522 OF 2003

Board of Trustees of the Port of Bombay .. Plaintiff
Vs.
M/s. Uttar Pradesh State Yarn Co. Ltd.
& Anr. .. Defendants

Mr.U.J. Makhija, senior advocate a/w. Mr.Roshan Pintto i/b Mulla & Mulla for plaintiff.

Mr.Akhlaque Solkar a/w. Ms.Farzana Sawant for defendant no.2.

CORAM : K.R.SHRIRAM, J.
DATE : 26TH JULY, 2016

P.C.

1 In or about March 1999, defendant no.1 came out with an issue of Private Placement Bonds to raise funds for the purpose of augmenting resources for normal business operations as well as for the implementation of modernisation/diversification programme. Issue size was Rs.35 cores, tenure was five years and interest payable was 14.90% p.a. payable annually. The redemption was at par at the end of 4th, 4 1/2 and 5th year- 33%, 33% and 34%, respectively.

The plaintiff, after considering the information Memorandum of the Private Placement Bonds, which also stated it was unconditionally and irrevocably guaranteed by defendant no.2, requested defendant no.1 to forward a certified copy of Government Guarantee for their record. Defendant no.1, vide their letter dated 15th April 1999 (Exh.P-3), forwarded four sets of Information Memorandum for Private Placement Bonds. In page 2 of the Bond Memorandum is annexed a letter from the Managing Director of defendant no.1 one Dr.Ashok Kumar, I.A.S., where it is stated *"the said issue has also been guaranteed by the State Govt. of Uttar Pradesh".* In the Memorandum, it is also mentioned at page 5 *"Guarantee :- The U.P. Government has provided an irrevocable and unconditional guarantee for payment of interest and re-payment of principal".*

2 Thereafter, in response to the letter dated 7th April 1999 (Exh.P-2), defendant no.1 forwarded a letter dated 23rd April 1999 (Exh.P-4) enclosing thereto a letter dated 12th February 1999 addressed by the Special Secretary to the Uttar Pradesh Government to the Managing Director of defendant no.1, in which it is stated that *the Uttar Pradesh Govt., viz., defendant no.2, has agreed to give its consent in principle to give Government Guarantee in favour of the investors concerned in the bonds issued by U.P. State Yarn Company Ltd. by opening Escrow Account for running Weaving Mills.* Following receipt of this confirmation, the plaintiff invested Rs.10 crores in the bond issued by defendant no.1 in three tranches of Rs.3 crores, Rs.2 crores and then Rs.5 crores. Against this payment, after repeated reminders,

defendant no.1 issued 1000 bonds of Rs.1,00,000/- each fully paid up. Copies of the letters of allotment are at Exh.P-14 colly. It provides - the Date of Allotment : 10th February 2000, Date of Redemption : 33% on 10th February 2004, 33% on 10th August 2004 and 34% on 10th February 2005. Bond Certificates were not issued by defendant no.1. Defendant no.1, however, has not denied issuing the bonds and having received the payments. The interest of 14.90 % p.a. on the bonds were payable annually each year upto the date of redemption.

3 As the interest amount was not received, the plaintiff, vide their letter dated 27th March 2000 (Exh.P-15), informed defendant no.2 that defendant no.1 had not paid the interest despite writing letters to them and as defendant no.2 has extended unconditional and irrevocable guarantee for payment of interest and repayment of principal amount of the bonds, defendant no.2 should look into the matter and direct defendant no.1 to expedite remittance of interest failing which defendant no.2 should arrange to remit the amounts.

4 As payments were still not made by defendant no.1, the plaintiff, vide its letter dated 12th May 2000 (Exh.P-18) brought to the notice of the Chief Secretary of defendant no.2 that the plaintiff had invested in the bonds

issued by defendant no.1 because this issue was guaranteed by the Government of Uttar Pradesh (defendant no.2) and as defendant no.1 is yet to pay even interest amount, defendant no.2 should pay the interest amount as well as the entire bond amount. This was followed by the another letter, dated 22nd June 2000 (Exh.P-19) from the plaintiff to defendant no.2, once again calling upon the Chief Secretary of defendant no.2 to look into the matter and if defendant no.2 did not pay, defendant no.2 should honour its commitment of paying interest amount as well as the principal amount. Paragraph 2 of the said letter reads as under :

> *2 I shall be thankful to you if you will kindly look into the matter and ask these organisations to remit the amounts of interest outstanding against them. You will agree that if these organisations are not able to fulfill the commitment, then it will be the Government of Uttar Pradesh which should honour its commitment of paying the interest amount as well as the principal amount. I am sure, the Mumbai Port Trust will receive the amount with your intervention without any further delay.*

5 Thereafter, defendant no.1, by its letter dated 22nd/24th July 2000 (Exh.P-20) informed the plaintiff that due to various reasons they were unable to utilize the amounts raised for modernisation and since three Units of defendant no.1 have been referred to B.I.F.R. for rehabilitation, defendant no.1 intended to pay interest from 10th February 2000, i.e., date of allotment and also wanted to refund the balance amount on pro-rate basis to all investors and sought the consent of the plaintiff. In the said letter, it is also

mentioned that for the balance amount, defendant no.1was requesting defendant no.2 to provide funds to the company which will take some time.

6 The plaintiff, left with no option, by its letter dated 2nd August 2000 (Exh.P-21) consented for refund as suggested by defendant no.1. Defendant no.1, by its two letters, both dated 4th August 2000 (Exh.P-22 and Exh.P-23, respectively) paid the plaintiff a sum of Rs.79,48,028/- and Rs.34,16,795/- on account of interest upto to 10th February 2000, i.e., Date of Allotment of Bonds. Subsequently, by a letter dated 7th August 2000 (Exh.P-24), defendant no.1 paid a sum of Rs.6,33,71,000/- towards redemption of Part Bond amount of Rs.10 crores. Defendant no.1 did not pay interest on this amount of Rs.6,33,71,000/- for the period from 10th February 2000 to 10th August 2000 and as regards the balance principal amount of Rs.3,66,29,000/-, defendant no.1 had not paid any interest from 10th February 2000. Therefore, the plaintiff, by its letter dated 13th September 2000, called upon the Chief Secretary of defendant no.2 (Exh.P-25) to direct defendant no.1 to make the payments which were long over due. In reply, defendant no.2, by its letter, dated 23rd October 2000 (Exh.P-26) informed the plaintiff as under :-

> *“..................... I have been advised to state that effective steps are being taken at the Government level for payment of the aforesaid amount”*

The plaintiff, by its reminder letter, dated 20th November 2000 (Exh.P-27) once again requested the Chief Secretary of defendant no.2 to make the payments. This was followed by reminder dated 29th January 2001 (Exh.P-28).

7 As there was no action being taken by defendant no.2, the plaintiff, by its letter dated 21st July 2001 (Exh.P-29), requested the Joint Secretary to the Government of India, Ministry of Shipping, New Delhi, under whose supervision the plaintiff is, to intervene in the matter and ensure that the defendants pay the monies outstanding. The Under Secretary to the Government of India, Ministry of Shipping, New Delhi, by a letter dated 22nd August 2001 (Exh.P-30) forwarded a letter received from the Chief Secretary of defendant no.2 in which the Chief Secretary has stated as under:

> *"Kindly refer to your DO letter No.PR-15015/1/2001-PG, dated 30th July 2001 regarding the payment of overdue amounts due to the Mumbai Port Trust by the UP State Yarn Company Ltd., and UP Co-operative Spinning Mills Federation Ltd.*
>
> *The matter has already been entrusted to the Principal Secretary, Industrial Development, Govt. of UP, for further necessary action in this regard."*

The plaintiff followed it up with the Industrial Commissioner & Principal Secretary and the Chief Secretary of defendant no.2 as well but there was no response. The plaintiff also gave notice to the defendants to make the payments through their Advocates but no payment was received.

8 By an order dated 14th September 2011, this Court was pleased to grant summary decree against defendant no.1. Defendant no.1 had filed reference before B.I.F.R. and the B.I.F.R., by its order dated 17th December 2009, had permitted the plaintiff to proceed against defendant no.1 on condition that if any decree is obtained against defendant no.1, the same should be executed only with the permission of the Board. I am told by the counsel for the plaintiff that the application of the plaintiff for permission to execute the decree is still pending before the B.I.F.R. Unconditional leave to defend was granted to defendant no.2.

9 Defendant no.2, filed its written statement in which defendant no.2 has denied that any bond was issued by defendant no.1 and also that defendant no.2 never executed any guarantee in favour of the investors including the plaintiff and therefore the defendant no.2 is not liable. In addition, of course, defendant no.2 has also raised an issue of limitation and that the suit itself is bad for mis-joinder of necessary parties.

10 Issues were settled on 30th June 2014 as under :

(i) Whether the Defendant No.2 proves that the Suit is barred

by limitation as alleged in paragraph 34 of the Written Statement ?

(ii) Whether the Defendant No.2 proves that the Suit is bad for non-joinder of necessary parties as alleged in paragraph 16 of the Written Statement ?

(iii) Whether the Plaintiff proves that the claim in the Suit is guaranteed by the Defendant No.2 as alleged in paragraphs 22, 34, 35A and 41 of the Plaint ?

(iv) Whether the Plaintiff proves that the Defendant No.2 is bound and liable to pay to the Plaintiff a sum of Rs.6,02,84,314/as claimed in paragraph 39 of the Plaint ?

(v) To what reliefs if any, are the Plaintiff entitled to ?

11 The plaintiff filed evidence of one witness viz. Veera Raghvan by filing an affidavit dated 30th July 2014 in lieu of examination in chief under Order 18, Rule 6 of the Code of Civil Procedure, 1908. The affidavit was taken on record and marked Exh.P-1. The plaintiff filed a compilation of 33 documents and all the documents were received in evidence and marked Exh.P-2 to Exh.P-34, respectively.

12 Defendant no.2, though it filed an affidavit in lieu of examination in chief of one Devi Prasad, Joint Secretary, Govt. of Uttar Pradesh, affirmed on 28th August 2014, later stated that witness will not be made available for cross-examination by the plaintiff. In fact, as recorded in the order dated 15th

April 2016, the counsel for defendant no.2 stated that defendant no.2 will not be relying on the the evidence of any witness let alone Devi Prasad and therefore the affidavit Devi Prasad filed in lieu of examination in chief not to be considered as affidavit in evidence on behalf of defendant no.2.

The counsel further stated that defendant no.2 does not wish to lead any evidence and the matter be placed for arguments.

13 It is the case of defendant no.2 that since the Ministry of Shipping has addressed a letter dated 22nd August 2001 (Exh.P-30) forwarding a letter from the Chief Secretary of defendant no.2, the Ministry of Shipping, Government of India, should have been made a party and the plaintiff having failed and neglected to join the Ministry of Shipping, Government of India, as party defendant, the suit deserves to be dismissed for non-joinder of necessary parties.

14 In my view, this is the most preposterous submission or argument anybody can come across. The Ministry of Shipping, Government of India, is not a necessary party. In the said letter of 22nd August 2001 (Exh.P-30), in response to the plaintiff's letter dated 21st July 2001 (Exh.P-29), the Ministry of Shipping has only forwarded a letter that the Chief Secretary of defendant no.2 had written to the Ministry of Shipping in which the Chief Secretary of

defendant no.2 has stated that the matter regarding the payment of overdue amounts to the plaintiff by defendant no.1 and another entity has been entrusted to the Principal Secretary, Industrial Development, Govt. of Uttar Pradesh for further necessary action in this regard. Therefore, the Ministry of Shipping is not a necessary party to this suit.

15 Coming to the issue of issue of limitation, the Letter of Allotment, issued by defendant no.1 states that the Date of Allotment to be 10th February 2000 and Date of Redemption to be 10th February 2004 (33%), 10th August 2004 (33%) and 10th February 2005 (34%). Though at first blush, it would look like the suit was filed prematurely before the redemption dates, defendant no.1, by its letter dated 22nd July 2000, informed the plaintiff that they do not wish to continue with the Scheme and they are refunding the amounts with interest. On 7th August 2000, demand draft of Rs.6,33,71,000/- on account of repayment of principal amount on Pro-rata basis was made. The leave under Clause 12 of the Letters Patent was obtained on on 28th July 2003 and the plaint was lodged on 29th July 2003. Therefore, the suit is within limitation.

16 As regards the issue as to whether repayment was guaranteed by defendant no.2, defendant no.2, vide its letters, which are received in

evidence, has informed the plaintiff that effective steps were being taken at the Government level for repayment of amounts to the plaintiff. Defendant no.2 had also confirmed, vide its Exh.P-4, that the Government has agreed to give government guarantee for the bonds. Counsel for defendant no.2 submitted that PW-1 in cross-examination was asked a question *'as to whether defendant no.2 had issued any guarantee in respect of the said transaction?'* and the witness has answered *'no such guarantee has been issued by defendant no.3 in favour of the plaintiff'* and

Another question was put *'As to whether the plaintiff entered into any correspondence with defendant no.2 regarding the guarantee?' and* answer thereto by PW-1 was *'there is no privity of contract between the State of Uttar Pradesh and the plaintiff'.*

And hence, defendant no.2, admittedly, had not given any guarantee and no amount was payable by defendant no.2 to the plaintiff.

17 In my view, counsel for defendant no.2 is not correct. It is settled law that documentary evidence will prevail over oral evidence (***Nagaraja Shetty Vs. Krishna***[1]). It is also a cardinal rule of evidence that, where written documents exist, they must be produced, as being the best evidence of their own contents. ***(Dinomoyi Debi Vs. Roy Luchmiput Singh***[2]***)***. Where oral

1 1996 AIHC 2904 (para 8) Kant).
2 (1879), 7 I.A.8

testimony is conflicting, much greater credence is to be given to men's acts than to their alleged words, which are so easily mistaken or misrepresented (***Meer Usd-Oollah, also called Shah Chaman Vs. Mussumat Beeby Imaman, widow of Shah Khadim Hoossain***[3]***)***.

18 From the answers to Q. 9 and Q.10 in cross-examination of PW-1, it should be noted that the witness has stated that *there was no guarantee issued by defendant no.2 in favour of the plaintiff and there was no privity of contract between the State of Uttar Pradesh and the plaintiff* but the documents which have been received in evidence confirms that defendant no.2 agreed to stand guarantee to the plaintiff for the repayment of the amount quoted by defendant no.1 under the Private Placement Bonds but in the written statements, defendant no.2 has dishonestly denied the fact any bond has been issued by defendant no.1. The documents speak otherwise. In response to the letters written from the plaintiff to defendant no.2, defendant no. 2 has not taken a stand questioning the plaintiff as to why they have approached defendant no.2 if defendant no.1 has not repaid the bond amount. In none of the letters, has defendant no.2 told the plaintiff that they are not concerned at all or expressed shock as to how defendant no.2 could repay to the plaintiff when defendant no.2 has not guaranteed the

3 (1836) 1 MIA 19, 42, 43

repayment.

19 On the contrary, defendant no.2, vide their letters which are exhibited and particularly Exh.P-26, has informed the plaintiff that effective steps were being taken at the Government level for repayment of the amounts to the plaintiff. Even in its letter to the Secretary, Ministry of Shipping, the Chief Secretary of defendant no.2 has stated that the matter regarding repayment of overdue amounts to the plaintiff by defendant no.1 has been entrusted to the Principal Secretary, Industrial Development for further necessary action. Therefore, it does not lie in the mouth of defendant no.2 to say that defendant no.1 never issued any bonds or defendant no.2 never stood guarantee.

20 Oral evidence of the plaintiff will have to be read as subsidiary to the documents at Exh.P-2, Exh.P-4, Exh.P-26 and Exh.P-30 because it is settled law that documentary evidence, in situations such as this, will prevail over oral evidence.

21 The Court has to look to the totality of the circumstances.

22 It is a cardinal rule of evidence that where there are written

documents in which the defendant has acknowledged liability, a stray answer from plaintiff's witness to a question in cross-examination and from the answer, it appears the witness has misunderstood the question (Q.No.10), the contents of the documents shall prevail. More-so, when the defendant has chosen not to lead any evidence.

23 It is true that defendant no.2 has not directly written when the bonds were issued that they stand guarantee. To that extent, there is no privity of contract but defendant no.2 has represented that they guaranteed repayment of bonds issued by defendant no.1 and interest thereon. Defendant no.2 has, by writing the letter Exh.P-4), caused the plaintiff to believe that they stand guarantee for repayment of the amounts by defendant no.1. Defendant no.2, therefore, is estopped from denying that they stood guarantee. The plaintiff, in its letter dated 12th May 2000 (Exh.P-18) informed the Chief Secretary of defendant no.2 that after examining all aspects of the matter and considering especially the fact that the bond issues of defendant no.1 was guaranteed by the Government of U.P., plaintiff's funds were invested as detailed in the said letter and the delay in payment of very first instalment of interest has shaken the plaintiff's confidence in the matter of the investments in bonds guaranteed by the State Government (defendant no.2).

24 Even in the letter dated 22nd June 2009 (Exh.P-19) from the plaintiff to defendant no.2, it is stated "you will agree that if these Organisations are not able to fulfill the commitment, (of paying interest amount as well as the principal amount) then it will be the Government of U.P. which should honour its commitment of paying the interest amount as well as the principal amount. Defendant no.2 did not even reply to these letters. Therefore, the plaintiff having acted on the representations of defendant no.2, defendant no.2 is now estopped from contending that they have never guaranteed or there is no privity of contract. I would add to say that defendant no.2, in fact, represented to all the investors including the plaintiff that they guaranteed repayment of the principal amount of the bonds plus interest.

25 In the circumstances, the plaintiff is entitled to a decree against defendant no.2, as prayed. Issues settled on 30th June 2014 are answered as under :

(i)	*Whether defendant no.2 proves that the suit is barred by limitation as alleged in paragraph 34 of the Written Statement?*	*:*	*No*
(ii)	*Whether defendant no.2 proves that the suit is bad for non-joinder of necessary parties as alleged in paragraph 16 of the Written Statement ?*	*:*	*No.*
(iii)	*Whether the plaintiff proves that the claim in the suit is guaranteed by defendant no.2 as alleged in paragraphs 22, 34, 35-A and 41 of the plaint?*	*:*	*Yes.*

(iv) To what reliefs if any, are the plaintiff entitled to ?	**:**	*As contained herein*

26 Decree as prayed for be drawn up accordingly. The plaintiff is also entitled to costs in the sum of Rs.1 Lac against defendant no.2.

27 The suit stands disposed accordingly.

(K.R. SHRIRAM, J.)