

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

WRIT PETITION NO.740 OF 2006

Gammon India Limited, a company
Registered under the Companies Act,
1959, having its registered office at
Gammon House, Veer Savarkar Marg,
Post Box No.9129, Prabhadevi,
Mumbai - 400 025

.. Petitioner

V/s.

1) The Debt Recovery Appellate Tribunal;

2) The Debt Recovery Tribunal - I
at Mumbai,
Both having their office at
Schindia House, Ballard Estate,
Mumbai 400 038.

3) Andhra Bank, a body incorporate
Constituted under the Banking
Companies (Acquisition & Transfer of
Undertakings) Act, 1980 having its
Head Office at Andhra Building,
Sultan Bazar, Hyderabad-500 195

And

One of its Branch Office
Inter alia, at Nanavati Mahalaya,
18, Homi Modi Street, Fort,
Mumbai - 400 023

.. Respondents

.....

Mr. Vishal Kanade i/b.M/s.Desai & Chinoy, Advocate for the
Petitioner.

Mr.Shilpan Gaonkar a/w. Tejal Kurdukar a/w. Dharmesh Pandya
i/b. M/s.Aswhin Pandya & Associates, Advocate for Respondent
No.3.

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**CORAM : S.C. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATED : SEPTEMBER 15, 2017.

ORAL JUDGMENT (PER PRAKASH D. NAIK, J.) :

The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India and has prayed for issuance of the writ of certiorari and prayed for quashing the order passed by the first respondent on 28th September, 2005.

2 The facts giving rise to the present petition are as follows:

- (a) The petitioner is a company registered under the provisions of the Companies Act. Between 1976 and 1980 the 3rd respondent issued 42 Bank Guarantees in favour of the State of Andhra Pradesh on behalf of the petitioner for execution of works connected with Sri Sailam Hydro Electric Project. The said Bank Guarantee/s were for an aggregate value of Rs.73,90,320/-.
- (b) Disputes arose between the petitioner and the State of Andhra Pradesh under the contract between them. The petitioner, thereafter, somewhere on 14th June, 1984 filed three suits in the City Civil Court at Hyderabad under

Section 20 of the Arbitration Act, 1940. On 27th May, 1985, the State of Andhra Pradesh invoked the said bank guarantees issued by the third respondent.

- (c) On 7th June, 1985, the respondent no.3 issued a letter to the State of Andhra Pradesh wherein it was contended that the invocation of Bank Guarantees by the State of Andhra Pradesh was invalid and disputed its liability to make payment under the same. The petitioner approached the City Civil Court wherein three applications under Section 20 of the Arbitration Act, 1940 were pending, seeking an injunction restraining the State of Andhra Pradesh from encashing the said Bank Guarantees.
- (d) In June 1985, the State of Andhra Pradesh filed four suits against the respondent no.3 and the petitioner, seeking orders directing the respondent no.3 to make payment under the said Bank Guarantees. On 16th September, 1985, the City Civil Court passed an interim order of injunction in the suits filed by the petitioner restraining the State of Andhra Pradesh from invoking the said Bank Guarantees. The Court was also pleased to appoint an arbitrator to

decide the disputes between the parties. On 4th November, 1986, the petitioner executed two counter guarantees in favour of the respondent no.3. Under Clause (i) of the said counter guarantees, the petitioner undertook to indemnify the respondent no.3 in respect of obligations and liabilities undertaken by it under the said Bank Guarantees.

(e) The State of Andhra Pradesh preferred an Appeal against the said order of the City Civil Court before the Andhra Pradesh High Court. By order dated 14th March, 1988, the said Appeal was rejected by the High Court. The State of Andhra Pradesh preferred an Appeal against the Order of the High Court before the Supreme Court. Vide order dated 17th March, 1994, the Hon'ble Supreme Court allowed the Appeal of the State of Andhra Pradesh and vacated the injunction restraining the encashment of the said Bank Guarantees.

(f) On 22nd March, 1994, the State of Andhra Pradesh again invoked the said Bank Guarantees. On 5th May, 1994, the petitioner deposited the entire amount of Rs.73,90,320/- payable under the said 42 Bank Guarantees in the City Civil

Court in the suits filed by the State of Andhra Pradesh. The State of Andhra Pradesh was permitted by the Court to withdraw the said amount. Having deposited the entire amount claimed by the State of Andhra Pradesh, the petitioner applied for dismissal of four suits filed by the State of Andhra Pradesh before the City Civil Court. However, this was opposed by the State of Andhra Pradesh to press for interest on the amount for the said Bank Guarantees.

- (g) On 16th July, 1996, the suit of the State of Andhra Pradesh was decreed against the respondent no.3. It was held by the City Civil Court that the respondent no.3 had acted unreasonably and in breach of its duty in refusing to make payment immediately under the said Bank Guarantees. The respondent no.3 was, thereafter, directed to pay costs and interest at the rate of 12% per annum on the amount payable under the said Bank Guarantees from the date of filing of the said suit until 4th May, 1994.
- (h) On 20th February, 1997, the respondent no.3 addressed a letter to the petitioner calling upon the petitioner to make payment under the counter guarantee of the amount

payable by the respondent no.3 under the order of the City Civil Court dated 16th July, 1996. By letter dated 29th March, 1997, the petitioner denied its liability to make the payment of the amount claimed by the respondent no.3. The respondent no.3 preferred an Appeal from the Order of the City Civil Court dated 16th July, 1996 to the High Court. By order dated 17th November, 1998, the High Court rejected the Appeal preferred by the respondent no.3. The said respondent, thereafter, filed Special Leave Petition against the order of the High Court dated 17th November, 1998 before the Hon'ble Supreme Court. Vide order dated 16th July, 1999, the Hon'ble Supreme Court rejected the said Special Leave Petition. On 8th August, 1999, the respondent no.3 made payment of an amount of Rs.81,01,122.80 to the State of Andhra Pradesh under the decree dated 16th July, 1996.

- (i) By letter dated 2nd November, 1999, the respondent no.3 called upon the petitioner to make payment of the amount of Rs.81,01,122.80 with interest thereon to the respondent no.3 under the counter guarantee dated 4th November, 1986. Vide letter dated 3rd January, 2000, the petitioner

denied its liability to make payment of the said amount. On 29th March, 2000, the respondent no.3 filed an application before the respondent no.2 for recovery of an amount of Rs.90,21,652.80 and interest thereon from the petitioner under the counter guarantees. By order dated 18th November, 2003, the respondent no.2 partially allowed the application of the respondent no.3 by directing the petitioner to make the payment of Rs.75,43,053.28 along with interest therein at the rate of 17.5 percent from the date of the application till the date of realisation of the said amount.

- (j) On 29th December, 2003, the petitioner preferred an appeal from the order of the respondent no.2 dated 18th November, 2003, before the respondent no.1. By order dated 9th January, 2004, the first respondent directed the petitioner to deposit 50% of the decretal amount i.e. 50% of Rs.75,43,053.28, as a precondition to the Appeal being entertained. Subsequently, by order dated 28th September, 2005, the Appeal preferred by the petitioner was dismissed by the respondent no.1 by upholding the finding that the respondent no.3 was entitled to claim the interest during

the period from 16th September, 1985 till 17th March, 1994. Being aggrieved by the aforesaid order, the petitioner has preferred the present petition before this Court.

3 The learned counsel for the petitioner Shri Kanade made three submissions:

- (a) That the petitioner is not liable to pay the interest claimed by the respondent no.3;
- (b) The claim is barred by the Law of Limitation;
- (c) The claim was already adjudicated by the Court in the earlier proceedings and on account of the principle of *res-judicata*, the respondent no.3 cannot raise the same claim again by preferring the application in which the impugned order was passed.

4 It is submitted by the learned counsel for the petitioner that the respondent no.1 has failed to appreciate that the State of Andhra Pradesh has invoked the said Bank Guarantees on 27th May, 1985. On that date, it is the admitted position that there was no order of injunction or any other restraint preventing the respondent no.3 from making payment under the said Bank Guarantees. It is also admitted position that the petitioner did not in any manner prevent the respondent no. 3

from making the payment under the said Bank Guarantees at that point of time. It was only on 16th September, 1985, that is after three and half months that an order of injunction restraining the encashment of the said Bank Guarantees was passed by the City Civil Court at Hyderabad. The respondent no.3 did not make payment under the said Bank Guarantees for a period of almost five months, although, it was required by them to do so immediately and unconditionally under the terms of the same and there was no restriction whatsoever on the respondent no.3 for honouring its commitment under the said Bank Guarantees. It is further submitted that the respondent nos.1 and 2 has failed to appreciate that the Bank Guarantees issued by the respondent no.3 in favour of the State Andhra Pradesh were unconditional and that the respondent no.3 was duty bound to honour the said commitment under the said Bank Guarantees. In terms of the said Bank Guarantees, the respondent no.2 was to pay the amount immediately when called upon to do so by the State of Andhra Pradesh unconditionally which was not done by them for the reason best known to them. The petitioner cannot be held liable for the unreasonable and negligent acts of respondent no.3. It is submitted that if the respondent no.3 under the said Bank Guarantees immediately or at any time between May and

September 1985 made payment, as it was bound to do under the said Bank Guarantees, the question of payment of any interest would not have arisen at all. The respondent no.3 was required to pay the interest as it acted in breach of its obligations under the Bank Guarantees and not for acting in accordance with the same. It is submitted that the first respondent had failed to appreciate that under the counter guarantee dated 4th November, 1986, the petitioner only undertook to indemnify the respondent no.3 in respect of obligations and liabilities validly undertaken by the respondent no.3 under the said Bank Guarantees and not for any act of negligence by respondent no.3. The indemnity could not be interpreted to cover the consequences of the breach by the respondent no.3 of such obligations and liabilities. It is also submitted that by decree dated 16th July, 1996 of the City Civil Court it was held that the respondent no.3 had acted unreasonably and in breach of its duty under the Bank Guarantees in refusing to make the payment immediately under the same. The appeals filed by respondent no.3 against the decree were rejected by High Court and Supreme Court. The findings in the said decree have become final and binding on the respondent. The question of petitioner indemnifying the respondent no.3 for the interest does not arise. The petitioner

was also defendant to the suits filed by State of Andhra Pradesh and the decree was passed only against respondent no.3. It is unjust to direct petitioner to reimburse the respondent no.3 for the amount paid under the decree when it had been held that it was respondent no.3 who was liable to make payment of the same for it had acted in breach of its obligations under the bank guarantees. It is submitted that the claim of respondent no.3 against the petitioner is time barred or beyond limitation. The cause of action against the petitioner arose when the decree directing payment of interest was passed against it i.e. on 16th July, 1996. The respondent no.3 called upon the petitioner to make payment under the counter guarantee vide its letter dated 20th February, 1997. The application of the respondent no.3 was filed before respondent no.2 on 29th March, 2000. The claim was, therefore, beyond three years and was barred by limitation. The contract of counter guarantee stood terminated ipso facto upon the petitioner depositing the amount of Rs.73,90,320/- in the City Civil Court on 5th May, 1994. Hence, the cause of action arose for the respondent no.3 on 5th May, 1994, when the petitioner deposited the entire amount covered by the bank guarantee in the City Civil Court. The application is also barred by *res-judicata*. The matter agitated by the respondent no.3 in the said

application was the subject matter which is already agitated before and decided by the City Civil Court, High Court and the Hon'ble Supreme Court. It is submitted that the City Civil Court at Hyderabad, in its order dated 16th July, 1996 had observed that the petitioner is not liable to pay interest and suit costs to the respondent no.3. It is also submitted that under the indenture of counter guarantee the petitioners are liable to pay only that amount which the respondent no.3 was required to pay under the bank guarantees. The impugned orders are, therefore, required to be set aside. The findings of the respondent nos.1 and 2 are erroneous being contrary to documents on record and law. It is submitted that the Courts while adjudicating the aforesaid issues had also observed at the earlier point of time that the petitioner is not liable to pay any interest thereon. It is, therefore, submitted that the respondent no.3 cannot hold the petitioner responsible for making the payment of the said Bank Guarantee. It is submitted that the issue of limitation was agitated before the DRT as well as the Appellate Tribunal, however, the same was not considered in proper prospectives. The Appellate Authority has not even dealt with the said issue, although, the reference about the issue relating to limitation was made in the order.

5 The learned counsel for the respondent no.3 submitted that the grounds raised by the petitioner in the present petition are devoid of any merits. It is submitted that the clauses incorporated in the Bank Guarantee as well as the counter guarantee are required to be noted and in view of the clauses enumerated therein, the petitioner is liable to pay the interest. The learned counsel pointed out Clauses 2 & 3 of the counter guarantee, which is annexed at page no.25 of the petition.

6 It is submitted that on perusal of the said Clauses, it is apparent that the executor to pay on demand all sums of money as the respondent no.3 may pay to the beneficiary under the guarantees issued by them, with interest thereon at 17.5 percent per annum from the date of payment until repayment by executor (petitioner). It is submitted that the petitioner cannot escape the liability of making the payment of interest. It is submitted that in the suits filed by the petitioner City Civil Court, Hyderabad passed an interim order of injunction on 16th September, 1985, restraining State of Andhra Pradesh from invoking the bank guarantee. The said injunction was vacated in the appeal preferred by the State of Andhra Pradesh before the Hon'ble Supreme Court, by order dated 17th March, 1994. It is further

submitted that the respondent no.3 had paid the amount on 8th August, 1999 to the State of Andhra Pradesh and, thereafter, the demand was made with the petitioner on 2nd November, 1999. It is, therefore, submitted that the contention of the petitioner that the application preferred by the respondent no.3 is barred by law of limitation is devoid of any substance. It is submitted that assuming that the arguments of the petitioner are accepted, it is required to be noted that the first demand was made on 20th February, 1997, and, the refusal was made on 29th March, 1997 and the original application was preferred on 29th March, 2000. It is, therefore, submitted that the said application was filed on the last day of the limitation and, therefore, the said application is not barred by law of limitation. It is further submitted that as per Article 137 of the Limitation Act, 1963, the limitation prescribed to prefer such an application is period of three years. It is submitted that the Court at the earlier point of time has not adjudicated upon the issue of payment of interest. The submissions advanced by the learned counsel for the petitioner is that the City Civil Court had held that the petitioner is not liable to pay the interest. However, in paragraph 9 of the order dated 16th July, 1996, it was observed that so far as the liability of the first defendant therein (petitioner) is concerned, it is stated that

the arbitration proceedings are pending between the parties. The plaintiff did not make claim against the defendant no.1 in the suit. Therefore, it is held that the first defendant is not liable to pay interest and suit costs to the plaintiff in the suit. Their dispute regarding the amount payable would be subject to the arbitration proceedings. The said suit is filed by State of Andhra Pradesh, wherein the petitioner was defendant no.1 and respondent no.3 was defendant no.2. It is, therefore, submitted that the said observations were made by the Court in the context of the pendency of the arbitration proceedings. Otherwise, in the earlier proceedings there is no adjudication on the issue of the payment of interest. It is submitted that on account of the clear terms stipulated in the counter guarantee, the petitioner is liable to pay interest. The learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of ***Syndicate Bank Vs. Channaveerappa Beleri & Ors.***¹

7 It is, therefore, submitted that the petition is devoid of merits and the same may be dismissed.

8 We have perused the grounds raised by the petitioner as well as the documents annexed to this petition. We have also

1 (2006) 11 SCC 506

gone through the orders passed by the first respondent as well as the respondent no.2. The respondent no.2 has observed that by virtue of the clause stipulated in paragraph 3 of the Indenture of the Guarantee, the applicant therein was entitled to claim an amount of interest during the period from 16th March, 1985 till 16th March, 1995, strictly during the period when the injunction order was running. It was also observed that the submission that the competent civil Court has rejected the claim of interest as against the defendant therein and, therefore, the said question has already being determined by the competent civil Court is devoid of any substance. It is observed that the question of application of principle of *res-judicata* does not arise. It is also observed that the issue about the limitation raised by the petitioner in the said application was turned down. The Appellate Authority confirmed the order passed by the respondent no.2.

9 We do not find any reason to interfere with the orders passed by the respondent nos.1 and 2. The respondent no.3 issued 42 bank guarantees in favour of State of Andhra Pradesh on behalf of petitioner. The petitioner filed suits for appointment of Arbitrator. On 27th May, 1985, the State of Andhra Pradesh invoked bank guarantees. The State of Andhra Pradesh also filed

suits against petitioner and respondent no.3. On 16th September, 1985, City Civil Court, Hyderabad passed an order of injunction restraining the State of Andhra Pradesh from invoking bank guarantees. At the request of petitioner, respondent no.3 executed two counter guarantees in favour of respondent no.3. The appeal preferred by State of Andhra Pradesh challenging the injunction order was rejected. In the appeal before Supreme Court, the said order was set aside on 17th March, 1994. The State of Andhra Pradesh then invoked the bank guarantees. The petitioner deposited the amount of bank guarantees on 5th May, 1994. On 16th July, 1996, the suits of State of Andhra Pradesh were decreed directing respondent no.3 to pay interest on the amount payable under the bank guarantees. The respondent no.3 challenged the said order but, could not succeed. The respondent no.3 made payment to State of Andhra Pradesh on 8th August, 1999. Thereafter, letter of demand was issued to petitioner for the said amount, which was replied on 3rd January, 2000, denying liability and then the application was preferred by respondent no.3 before the respondent no.2.

10 It is apparent that the petitioner had obtained injunction restraining the State of Andhra Pradesh from

recovering the amount under bank guarantees on 16th September, 1985, which was vacated on 17th March, 1994. The suit was prolonged on that account. The genesis for the payment under the decree is the bank guarantee given by respondent no.3. Neither the decree would have been passed against the respondent no.3 bank, nor the respondent no.3 would have been required to make any payment, had it not given the bank guarantee on behalf of petitioner. The decree amount cannot be segregated from bank guarantees.

11 The bank guarantee was executed by respondent no.3 in favour of Governor of Andhra Pradesh on behalf of petitioner. After the order of injunction passed by City Civil Court, Hyderabad on 16th September, 1995, the petitioner executed two counter guarantees on 4th November, 1986 in favour of respondent no.3. The petitioner undertook to indemnify respondent no.3 in respect of liabilities incurred by them under the bank guarantees. The counter guarantee indicates that the same is issued by petitioner being executor in favour of respondent no.3, in consideration of having at their request executed guarantee/s in favour of Governor of Andhra Pradesh and undertake to agree with the terms stated therein. The clauses 1 to 5 of the said counter guarantee read as follows:

- “1 To keep you fully indemnified and saved harmless in respect of each and every obligation and liability undertaken/incurred by you (whether directly or indirectly) under the said guarantee/s or in renewals thereof from time to time, or otherwise howsoever.*
- 2 To pay to you on demand all sums of money as you may pay to the beneficiary under the guarantee/s issued by you, with interest thereon at 17.5 per cent per annum from the date on which you so pay until repayment by us. The reasonableness or propriety of any such payment shall not be questioned and shall be binding on us.*
- 3 To pay to you on demand all costs, charges and expenses (including the legal costs between attorney and client) paid or incurred by you in any way concerning the guarantee/s and your obligations and liability thereunder and this counter guarantee and your rights hereunder.*
- 4 To indemnify you against all loss or damage in the event of any dispute arising with respect to the obligations under this guarantee from our heirs, executors and administrators, successors and assigns.*

5 *This agreement shall be binding on us and our heirs, executors and administrators/successors and assigns and shall continue to be valid and binding as irrevocable until you stand discharged from the guarantee/s executed by you, or until such time as we procure for you the return or discharge of the aforesaid guarantee/s renewals thereof."*

On reading the said clauses, it can be gathered that vide Clause (1) the petitioner had agreed to fully indemnify the respondent no.3 and saved harmless in respect of each and every obligation and liability undertaken/incurred by them directly or indirectly under the guarantee/s in renewal or otherwise. Clause (2) stipulates payment on demand all sums of money as they may pay to the beneficiary under the guarantee/s issued by respondent no.3 with interest thereon at 17.5 percent from the date on which they would pay until repayment by petitioner. The reasonableness or propriety of such payment shall not be questioned and binding on petitioner and clause 3 requires payment on demand all costs, charges etc. incurred in guarantees/obligations and liability under counter guarantees. Clause 5 stipulated that the agreement is binding on executors

till the respondent no.3 stand discharged from the guarantee/s executed by them. By virtue of these clauses, the respondent no.3 would be entitled to claim the amount of interest. It has to be noted that the respondent no.3 had deposited an amount of Rs.81,01,122.80 with State of Andhra Pradesh under the decree dated 16th July, 1998, the liability has accrued on account of bank guarantee executed by respondent no.3 on behalf of petitioner. The petitioner cannot be absolved from the said liability. In the order vacating injunction by Hon'ble Supreme Court on 17th March, 1994, it was observed that the submission that the bank guarantee was not in absolute terms but was a conditional one cannot be accepted. The submissions advanced by the counsel for the petitioner deserves to be rejected. The other argument regarding *res-judicata* also cannot be accepted. On perusal of the order passed by the City Civil Court at Hyderabad, it is clear that no order was passed against the defendant (petitioner) since arbitration proceedings between the defendant and State of Andhra Pradesh were going on and the State of Andhra Pradesh had not made any claim against the defendant in that suit.

12 Though the order passed by the respondent no.1 is silent about the maintainability of application on the ground of

limitation, for the reasons assigned by the respondent no.2 and considering the factual aspect, we are of the opinion that even though the Appellate Authority has not dealt with the said issue, there is no merit in the submission advanced by the learned counsel for the petitioner as the application was within the limitation of law. It is pertinent to note that the amount in respect to the interest was deposited by the respondent no.3 on 8th August, 1999 and, thereafter, on 2nd November, 1999, the respondent no.3 addressed a letter to the petitioner and called upon them to make the payment of the said amount of Rs.81,01,122.80 with interest thereon. The petitioner denied its liability vide letter dated 3rd January, 2000. The application was preferred by the respondent no.3 on 29th March, 2000, before the respondent no.2 for the recovery of an amount of Rs.90,21,652.80 and interest thereon from the petitioner under the counter guarantee. The letter dated 20th February, 1997 issued by respondent no.3 calling upon the petitioner to make the payment is not significant for considering the limitation for filing the application. Even, on perusal of counter guarantee, it is clear that payment was to be made on demand as stipulated in Clause (2) therein, in respect to all sums, money the respondent no.3 pays to the beneficiary under the guarantee, with interest

thereon. The demand in the present case which is the cause of action for filing the application is dated 2nd November, 1999, which was made in pursuant to deposit made on 8th August, 1999. In our opinion, therefore, the period of limitation starts running from the date after the amounts was deposited and the demand was made by the respondent no.3 and the said application was filed well within the period of limitation. The Hon'ble Supreme Court in paragraph no.9 in the case of ***Syndicate Bank Vs. Channaveerappa Beleri & Ors. (Supra)*** relied upon by the respondent no.3 has stated as follows:

“9 A guarantor's liability depends upon the terms of his contract. A 'continuing guarantee' is different from an ordinary guarantee. There is also a difference between a guarantee which stipulates that the guarantor is liable to pay only on a demand by the creditor, and a guarantee which does not contain such a condition. Further, depending on the terms of guarantee, the liability of a guarantor may be limited to a particular sum, instead of the liability being to the same extent as that of the principal debtor. The liability to pay may arise, on the principal debtor and guarantor, at the same time or at different points of time. A claim may be even time-barred against the principal debtor, but still enforceable against the guarantor. The parties may agree that the liability of

a guarantor shall arise at a later point of time than that of the principal debtor. We have referred to these aspects only to underline the fact that the extent of liability under a guarantee as also the question as to when the liability of a guarantor will arise, would depend purely on the terms of the contract."

The Apex Court in paragraph no.18 of the said decision has also observed as follows:

"18 Some arguments were addressed about the Article of limitation that would apply in respect of a suit against the guarantors. Samuel (supra) held that in the case of refusal of a guarantor to pay the amount, the matter would be governed by Article 115 of the Schedule to the Limitation Act, 1908, which corresponds to Article 55 of the Limitation Act, 1963. One of the submissions made before us was that the term 'compensation for breach of contract' in Article 55 indicates to a claim for unliquidated damages and not to a claim for payment of sum certain (as to what is the difference between a claim for unliquidated damages and a claim for a sum certain or a sum presently due, reference can advantageously be made to the classic statement of Law by Chagla, C.J., in Iron & Hardware (India) Lct., Vs. Firm Shamlal & Bros. (AIR 1954 Bom.423). If Article 55 does not apply, then a claim against a Guarantor in such a

situation may fall under the residuary Article 113 of the Limitation Act, 1963 corresponding to Article 120 of the old Act. The controversy about the appropriate Article applicable, when the claim is found to be not exactly for 'compensation' but ascertained sum due has been referred to as long back as 1916 in Tricomdas Cooverji Bhoja Vs. Gopinath Jin Thakur (AIR 1916 PC 183). Under the old Limitation Act (Act of 1908), the periods prescribed were different under Article 115 and 116. The periods prescribed were also different under Article 115 and 120. But under the 1963 Act, the period of limitation is the same (three years) both under Article 55 and 113. Having regard to the fact that the period of limitation is 3 years both under Article 55 and Article 113, and having regard to the binding decision in Samuel (supra), we do not propose to examine the controversy as to whether the appropriate Article is 55 or 113. Suffice it to note that even if the Article applicable is Article 113, the Bank's suit is in time."

In the light of observations of the Apex Court in the aforesaid decision and for the reasons stated above, the argument about bar of limitation is required to be rejected.

13 In view of the above observations, we find no reason to interfere in the said orders passed by respondent nos.1 and 2. No case is made out to invoke writ jurisdiction under Article 226

of the Constitution of India to disturb the concurrent finding of respondent nos.1 and 2. Hence, we find that there is no merits in the petition and the same deserves to be rejected.

14 Hence, we pass the following order:

:: ORDER ::

- (i) Writ Petition No.740 of 2006 stands rejected;
- (ii) No order as to costs.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)