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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 402/2016**

Judgment pronounced on : January 06, 2017

M/S SAWHNEY BROTHERSAppellant
Through : Mr. T. S. Sawhney, Appellant in
person

Versus

HONGKONG & SHANGHAI BANKING CORPN.Respondents
Through : None.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

1. The present appeal has been filed against the order dated 06.05.2016 passed by the learned Single Judge of this court whereby the second review petition No. 191/2016 filed by the present appellant was dismissed.
2. The Appellant contended that learned Single Judge has failed to take note of the observations made by the High Court of Cuttack in the case titled as *Ramkrushna Dasmahopatra @ Tikipua vs. Indian Tea Provisions Ltd. 2013(II) ILR-CUT-I*, dated 12.12.2012 and dismissed his application in limine.
3. We have heard the appellant in person and have pursued the material available on record.
4. Petitioner filed a writ petition bearing No. 3569/2012 with a prayer

for directing the respondent Bank to refund the claim of the petitioner along with interest on the ground that it is a case of maritime fraud committed upon the appellant by the respondent bank in connivance with the actual importer. The appellant had opened a letter of credit for US\$ 486,000 with Uniform Custom and Practice from documentary credits (the UCP) conditions which were thereafter, not complied with by the respondent Bank. The respondent Bank released the USD 486,000 without complying with the condition of the amended letter of credit and without demanding inspection certificates from the beneficiary of the letter of credit in violation of Article 7 of the UCP. Furthermore, the Letter of Credit was received by respondent Bank in the morning of 30.08.1979 and the said amount was released on the very same day only because of involvement of the bank employees. The said writ petition was disposed of on 01.06.2012 by the learned Single Judge holding as under-

"The petitioner has preferred this writ petition to seek a writ of mandamus to direct the respondent bank, i.e., the Hongkong and Shanghai Banking Corporation to disburse the petitioner's claim of US\$7,86,540.00 with 18% interest with quarterly rests. The petitioner has preferred the suit against the respondent bank. On the basis of cross-examination conducted in the said proceedings of the bank's witness, the present petition has been preferred to claim that the earlier defence of the bank that they had received the amendment in the Letter of Credit after its payment has been falsified. According to the petitioner, the amendment of the Letter of Credit furnished at the petitioner's instance had reached the respondent bank even prior to disbursing the payment there under to the beneficiary.

The petitioner already having preferred the civil suit, which is still pending cannot prefer the present writ petition. The effect of the said so-called receipt of the communication regarding amendment of the L.C. prior to the making of payment under the L.C., will have to be decided by the civil Court. The petitioner cannot invoke the civil remedy, and thereafter give up the same to prefer a writ petition and that too, on the basis of proceedings which have taken place in the Civil Court. Moreover, it remains doubtful whether the petitioner's present petition is maintainable against the respondent bank, since it is a private bank. I am, therefore, not inclined to entertain the present petition. However, it shall be open to the petitioner to approach the Civil Court on the basis of the so-called admission under Rule XII CPC."

5. Against the order dated 01.06.2012 passed in W.P.(C) No. 3569/2012 petitioner preferred an appeal by filing LPA No. 725/2012 which was disposed of as withdrawn on 03.03.2014. The order dated 03.03.2014 is recapitulated as under-

"After some hearing Mr. T.S. Sawhney, appellant in person sought liberty to withdraw the appeal stating that his arguments on the question of amendment to the L.C. - which according to him is in issue before the learned Single Judge in the pending suit and the alleged fraud played upon him would be urged before the learned Single Judge.

The appellant is at liberty to urge such questions of facts and law as are permissible in accordance with law having regard to the issues framed in the pending suit and pursue all remedies.

All rights and contentions of all parties are reserved.

The appeal is accordingly disposed of as withdrawn.”

6. Thereafter, the petitioner filed a review petition bearing No. 191/2016 against the order dated 01.06.2016 passed in W.P. (C) No. 3569/2012 after a delay of around two years, which was dismissed vide order dated 06.05.2016, impugned before us.

7. In our view, the challenge made by the appellant in the second review petition has already attained finality vide order dated 03.03.2014 passed in LPA 725/12 and now he cannot raise the same ground again in view of the principle of *res judicata*.

8. The contention of the appellant that the judgment passed by the High Court of Cuttack in the case titled as *Ramkrushna Dasmahopatra @ Tikipua vs. Indian Tea Provisions Ltd. 2013(II) ILR-CUT-I*, dated 12.12.2012 has not been considered is concerned, we are of the view that the said judgment does not come to the rescue of the appellant, as we have already held above that second review petition is not maintainable in view of the fact that the issue raised in LPA 725/2016 has attained finality in terms of order dated 03.03.2017.

9. Accordingly, the present appeal is dismissed.

SANGITA DHINGRA SEHGAL, J

CHIEF JUSTICE

JANUARY 06, 2017