NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 31 -7-2018

Judgment delivered on 9-8-2018

FA No. 454 of 2000

1. M/s Arunanshu Roy, a partnership firm
2. Shri Arunanshu Roy, s/o. Shri S.S. Roy.
3. Shri Premanshu Roy, s/o. Shri S.S. Roy.
4. Shri Snehanshu Roy, s/o. Shri S.S. Roy.
5. Smt. Pratima Roy, w/o. Shri S.S. Roy.

   All residents of C/o. Shri S.S. Roy, near Gayatri Mandir, Talaram Road, Bilaspur, Tahsil and District Bilaspur MP (Now CG).

---- Appellants.

Versus

- Bank Of India, Head Office Express Tower, Nariman Point, Mumbai, Branch Office at behind Jairam Complex, G.E. Road, Raipur, Tahsil and District Raipur (CG).

---- Respondent

For appellants	:	Mr. H.S. Patel, Advocate.
For respondent	:	None though served.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellants have preferred this appeal under Section 96 of Code of Civil Procedure 1908 against the judgment and decree dated 14-3-2000 passed by the Vth Additional District Judge, Raipur (CG) in Civil Suit No. 6-B/99 wherein the said court decreed the suit filed by the respondent and ordered the

appellants to pay Rs.82,483/- to the respondent with interest as per terms and agreement of the contract.

2. It is admitted between the parties that the bank guarantee was submitted by the appellants before South Eastern Railway and said railway invoked the bank guarantee on account of some contractual default. The respondent Bank thereafter asked the appellants to make payment of the amount, but they failed to repay the amount.

3. Learned counsel for the appellants submits as under:

    I) Validity period of the bank guarantee has already expired, therefore, the appellants were not bound to make payment of the amount ;

    ii) Validity period of the bank guarantee was not validly extended as revenue stamp of 00.20 naya paisa was affixed in revival letter.

    Iii) Interest awarded @ 17.25% is excessive.

4. I have heard learned counsel for the appellants and perused the record in which judgment and decree passed by the court below.

5. As per document (Ex.P/17) which is signed by the appellants is dated 15-2-1996. Though revenue stamp of 00.40 naya paisa

was affixed in the said document, there is no law/rule /circular invalidating the same and saying that upon fixing stamp of 00.40 Naya Paisa said document will not be acted upon. The suit was filed within three years of execution of the said document, therefore, it cannot be said that validity period is expired . As the guarantee period is extended by revival letter, the bank was having right to enforce the same according to law. When the appellants were under obligation to discharge their liability, they are duty bound to repay the amount. The interest awarded by the trial Court is based on the agreement between the parties and in commercial transaction it shall be as per terms and conditions of the contract as per Section 34 of the Code of Civil Procedure, 1908.

6. Considering all the facts and the material available on record, this court is of the view that the finding arrived at by the trial Court is based on proper marshalling of evidence and the same is not liable to be interfered while invoking jurisdiction of this appeal.

7. Accordingly, the decree is passed against the appellants/defendants and in favour of respondent/plaintiff on the following terms and conditions.

   I) The appeal is dismissed with cost.

   ii) The appellants shall bear the cost of the respondent.

iii) Counsel fee, if certified be calculated as per certificate or as per Schedule whichever is less.

iv) A decree be drawn accordingly.

Sd/-

(**Ram Prasanna Sharma**)
JUDGE

Raju