

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5123 OF 2017
WITH
WRIT PETITION NO. 3587 OF 2018

Rupee Cooperative
Bank Limited

.. Petitioner.

vs.

Vijaya Paints Pvt. Ltd. and ors.

.. Respondents.

Mr. S.S. Panchpor I/b Sanjay Natu Law Office for the
Petitioner.

Mr. S.S. Kanetkar for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.

RESERVED THE JUDGMENT : 25 APRIL 2019.

PRONOUNCED THE JUDGMENT : 02 MAY 2019.

JUDGMENT :-

1] Heard learned counsel for the parties.

2] Learned counsel for the parties agree that both these
petitions can be disposed of with common judgment and
order, since the issues involved therein are common.

3] Accordingly, Rule in both the petitions. Rule is made
returnable forthwith, with the consent of and at the request
of learned counsel for the parties.

4] The challenge in Writ Petition No. 5123 of 2017 is to the orders dated 2nd January 2017 and 1st April 2017 made by the Cooperative Court (Trial Court) and the Cooperative Appellate Court (Appeal Court) holding *inter alia* that *ex parte* judgment and award in Dispute No.391 of 2001 stands set aside against the respondents herein and not merely as against respondent Nos.2 and 3 herein and on such basis, permits respondent No.1 to participate in the remanded proceedings and even cross-examine the witnesses on behalf of the petitioners.

5] The challenge in Writ Petition No. 3587 of 2018 is to the order dated 8th February 2018 passed by the Cooperative Court (Trial Court) and the order dated 22nd February 2018 passed by the Cooperative Appellate Court (Appeal Court) directing the petitioners to accept an amount of Rs.32,58,373 from respondent No.1 or any other amount offered by respondent No.1 towards outstanding loan balance in the loan account No. 273 maintained by the petitioner bank *qua* respondent No.1.

6] The fate of the impugned orders in Writ Petition No. 3587 of 2018 will depend up the decision in Writ Petition No. 5123 of 2017, in which, the main issue is whether *ex parte* judgment and award dated 10th August 2007 came to be set aside in its entirety as against all the respondents or whether, the *ex parte* judgment and award was only set aside *qua* respondent Nos.2 and 3. If, in Writ Petition No. 5123 of 2017, it is held that *ex parte* judgment and award was set aside only *qua* respondent Nos. 2 and 3 and not *qua* the other respondents, including in particular respondent No.1, then obviously, relief will have to be granted to the petitioner bank in Writ Petition No. 3587 of 2018 as well.

7] In this case, the petitioner bank instituted a dispute bearing Dispute No. 391 of 2001 against all the respondents claiming amounts advanced by the petitioner bank to the principal borrower M/s. Vijaya Paints Pvt. Ltd. (VPPL) and the remaining respondents, who were guarantors/sureties. The dispute was disposed of by the judgment and award dated 10th August 2007 which was made *ex parte* since the

respondents failed to appear in the matter.

8] Thereafter, only respondent Nos.2 and 3, i.e., Abbas Motiwala and Nadira Motiwala took out M.A. No. 78 of 2007 seeking to set aside the *ex parte* judgment and award dated 10th August 2007. The substantive prayer made by these two respondents in M.A. No. 78 of 2007 reads thus:

“c) The Ex-parte Judgment and Award dated 10/08/2007 passed by this Hon’ble Court in dispute bearing No. 391 /2001 may kindly be quashed and set-aside and the Applicants may kindly be given an opportunity to contest the said dispute on merits including an opportunity of taking cross-examination of the witness of the Opponent Bank, leading oral evidence by the Applicants and to make legal and factual submissions/arguments”.

9] Significant to note that VPPL, Principal borrower as also the other two guarantors Hema N. Mehta and Anis S. Karmalawalla chose not to impugn the *ex parte* judgment and award dated 10th August 2007 either independently or even otherwise.

10] By the judgment and order dated 31st March 2015, the Trial Court allowed M.A. No. 78 of 2007 and made the following order:

“ORDER

- 1] *Misc.application is allowed on the following terms.*
- 2] *Exparte judgment and award passed in dispute No.391/2001 dt.10/8/2007 is hereby set aside subject to condition that the applicants should deposit Rs.50,000/- each in the Court jointly and severally within a period of 2 months from this order and the same be invested in any nationalized bank. Such deposit is without prejudice to the defence of the applicants and the successful party to the dispute would be entitled to this amount.*
- 3] *If the applicants failed to comply clause No.2 of this order within stipulated period previous condition will prevail.*
- 4] *After the compliance of clause No.2 of this order the dispute bearing No.391/2001 is restored and will fixed for cross of the witness of the bank by the opponents.”*

11] The petitioner bank, aggrieved by the order dated 31st March 2015, instituted Revision Application No. 56 of 2015 before the Appeal Court which came to be disposed of by order dated 10th February 2016 and the operative portion of Revisional Court's order dated 10th February 2016 reads thus:

“01. The Revision application No. 56/2015 is hereby partly allowed.

02. The order dated 31/03/2015, passed "Below Misc. Application No. 78 of 2007" by the Ld. Judge, Co-op. Court No.2, Pune is hereby set aside and modified as under;

I) The Misc. Application bearing No.78/2007 filed by the applicant is allowed subject to part payment of Rs.25 Lakhs by the applicants (respondent No.1 & 2) upon the disputant (applicant bank) on or before 31/03/2016.

II) Failure to comply the condition as mentioned in clause "I" herein above, the Misc. Application No. 78/2007 filed by the applicants stand rejected, and the disputant bank is entitled to recover the entire amount as per earlier judgment and award Dt.10/08/2007, passed by the Ld. Trial Judge in dispute bearing No. 391/2001.

III) No order as cost of Misc. Application.

03. The Ld. Trial Judge is hereby directed to see first, whether the order passed by this Court is complied with or not, and if the order is complied with, then to proceed with the matter further, and decide the same, as expeditiously as possible, preferably within a period of 6 months from the date of this order.

04. No order as to cost.

05. R & P of Trial Court be send back to the Trial Court immediately."

12] The respondent Nos.2 and 3, i.e., Abbasbhai Motiwala and Nadira Motiwala, aggrieved by the Revisional Court's order dated 10th February 2016 instituted Writ Petition (St) No. 9315 of 2016 which came to be dismissed by this Court vide order dated 30th March 2016.

13] In pursuance of the Revisional Court's order dated 10th February 2016, the proceedings recommenced in Dispute No. 391 of 2001. In the said proceedings, respondent No.1, i.e., VPPL insisted upon participating and even cross-examining the witnesses on behalf of the petitioner bank. Therefore, the petitioner bank took out an application at Exhibit-71 seeking restraint on the participation by the VPPL. By the impugned order dated 2nd January 2017, the Trial Court dismissed this application.

14] The petitioner bank then instituted Revision Application No. 14 of 2017 before the Appeal Court, which came to be dismissed by the impugned order dated 1st April 2017. Hence, the petitioner bank have instituted Writ Petition No. 5123 of 2017 against the said two orders dated 2nd January 2017 and 1st April 2017.

15] Learned counsel for the petitioner bank submits that in M.A.No. 78 of 2007, the *ex parte* judgment and award dated 10th August 2007 came to be set aside only *qua* respondent

Nos.2 and 3, i.e., Abbas Bhai and Nadira. He submits that the impugned judgment and order was clearly not indivisible, but the same was divisible. Therefore, there was nothing wrong in the judgment and award being set aside *qua* respondent Nos.2 and 3, but the same attaining finality for want of challenge as against VPPL and respondent Nos.4 and 5, other guarantors/sureties. Learned counsel submits that the Trial Court and the Appeal Court clearly exceeded jurisdiction in holding that the judgment and award dated 10th August 2007 was indivisible and therefore, the same was set aside in its entirety by the Cooperative Court. He submits that the two Courts failed to appreciate the legal position that the bank was entitled to proceed independently against the principal borrower and the guarantors. He relies on ***Vasant Jaiwantrao Mahajan vs. Tukaram M. Patil – AIR 1960 Bom 485***, to submit that in case of money decrees the proviso to Order 9 Rule 13 of CPC generally does not apply. For these reasons, Mr. Panchpor submits that the impugned orders are liable to be set aside.

16] Insofar as the Writ Petition No. 3587 of 2018 is concerned, Mr. Panchpor reiterates the aforesaid contentions. He submits that in pursuance of judgment and award dated 10th August 2007, the petitioner bank has already auctioned the premises belonging to VPPL and credited the amounts received in the auction proceeding into the Loan Account No. 273 concerning the respondents. He submits that the impugned order which is questioned in Writ Petition No. 3587 of 2018 virtually suggests that the judgment and award dated 10th August 2007 was set aside *qua* VPPL as well, which is neither factual nor legal position. Therefore, he submits that the impugned orders which are questioned in Writ Petition No. 3587 of 2018 deserve to be set aside and directions issued for refund of the amount of Rs.32,58,373.14 to VPPL.

17] Mr. Kanetkar, learned counsel for respondent Nos. 1 to 3, submits that the judgment and award dated 10th August 2007 was set aside not only against respondent Nos.2 and 3, but also against VPPL, which is clear from the Trial Court's

order dated 31st March 2015. He submits that the *ex parte* judgment and award dated 10th August 2007 was indivisible and therefore, the same correctly set aside as against all the respondents, even though, it is only respondent Nos.2 and 3, who may have applied for setting aside of the same. He submits that such a course of action relates to the provisions contained in the proviso to Order 9 Rule 13 of CPC. He relies upon ruling of the Supreme Court in ***Bank of India vs. Mehta Brothers and ors. - (2008) 13 SCC 466*** in support of his contention.

18] Mr. Kanetkar submits that respondent Nos.2 and 3 are nothing but the Directors of VPPL. He therefore, submits that any order in favour of respondent Nos.2 and 3 is essentially an order in favour of VPPL. He submits that *ex parte* judgment and award dated 10th August 2007 came to be set aside because there was no valid service upon respondent Nos.2 and 3. He submits that since respondent Nos.2 and 3 are the Directors of VPPL, it is required to be presumed that there was no valid service upon VPPL as well. He therefore,

submits that it is inconceivable that the *ex parte* judgment and award dated 10th August 2007 stands set aside against respondent Nos.2 and 3 but not against respondent No.1. For all these reasons, he submits that there is absolutely no error in the impugned orders made in both petitions and accordingly, these petitions are required to be dismissed.

16] Mr. Kanetkar, further submits that as per the statement made by Mr. Panchpor, the proceedings before the Cooperative Court consequent upon remand have already been disposed of and the respondents have held liable to make payments to the petitioner bank. He submits that this is because this Court, by its order dated 11th December 2018 had stayed further proceedings before the Cooperative Court *qua* only the principal borrower VPPL, had directed that the suit could proceed against the guarantor, i.e., respondent Nos.2 and 3 herein. He submits that if the proceedings in pursuance of the remand have already been disposed of, then, the reliefs in this petition have been rendered

infructuous and these petitions should be disposed of on the said ground.

17] The rival contentions now fall for determination.

18] At the outset, it is necessary to deal with Mr. Kanetkar's contention that these petitions are rendered infructuous.

19] From narration of facts as aforesaid, it is apparent that pending final disposal of Writ Petition No. 5123 of 2017, this Court on 11th December 2018 made the following order:

“Learned advocate appearing on behalf of Respondent Nos.1 to 3 has some difficulty today, and therefore, prays that this matter be stood over to 18th December, 2018.

2 S.O. to 18th December, 2018. In the meanwhile the suit pending before the Trial Court is stayed till further orders only qua the principal borrower. The suit can proceed against the guarantors.

3 S.O. to 18th December, 2018 on supplementary board.”

20] From the aforesaid, it is quite clear that the issue as to whether VPPL, the principal borrower should participate or not in the proceedings before the Cooperative Court in pursuance of setting aside of the *ex parte* judgment and

award dated 10th August 2007 was specifically kept open. If ultimately, this Court were to dismiss Writ Petition NO. 5123 of 2017, then VPPL could perhaps insist that it was kept out of the proceedings before the Cooperative Court in pursuance of remand on the basis of interim order which was to operate during pendency of Writ Petition No. 5123 of 2017 and therefore, if the writ petition has to be dismissed, then, VPPL – principal borrower must now be allowed to take part in the proceedings or the order which has been made by the Cooperative Court without permitting VPPL – principal borrower to participate in the proceedings must be set aside. In these circumstances, it is quite obvious that the present petitions have neither been rendered infructuous nor can be disposed of as having become infructuous, as contended by Mr. Kanetkar.

21] Besides, if this petition is disposed of as infructuous, it is also possible that VPPL might content that the *ex parte* judgment and award dated 10th August 2007 had in fact been set aside *qua* VPPL – principal borrower and therefore,

auction of VPPL property by the bank in pursuance of such *ex parte* judgment and award is rendered vulnerable. Clearly, therefore, there is no merit in the contention of Mr. Kanetkar that these petitions have rendered infructuous and should be disposed of as such.

22] The main issue in these petitions is whether *ex parte* judgment and award dated 10th August 2007 made by the Trial Court was set aside only *qua* respondent Nos.2 and 3 or whether, the same was set aside as against all the respondents, including in particular respondent No.1 – VPPL – principal borrower.

23] As noted earlier, M.A. No. 78 of 2007 was taken out only by respondent Nos.2 and 3, i.e., Abbasbhai and Nadira. Even the relief prayed for by them was very specific, in that only they, i.e., respondent Nos.2 and 3, may be given opportunity to contest the dispute on merits including an opportunity of taking cross-examination of the witness on behalf of the bank, leading oral evidence by them and

making legal and factual arguments. The application was very specific and the application did not refer to either setting aside of the *ex parte* judgment and award dated 10th August 2007 *qua* all parties including VPPL or grant of any further opportunity of cross-examination or leading of evidence to all parties including VPPL.

24] The Trial Court's order dated 31st March 2015, at clause (2) of the operative portion, no doubt, refers to the *ex parte* judgment and award dated 10th August 2007 being set aside subject to certain conditions. However, the same has to be read in the context of prayers in M.A. No. 78 of 2007. From the contents of the judgment and order dated 31st March 2015 as well, it cannot be said that the Trial Court consciously exercised the powers under the first proviso to Order 9 Rule 13 of CPC, which *inter alia*, provides that where the decree is of such nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also. Therefore, it is not possible to accept Mr. Kanetkar's contention that *ex parte*

judgment and award dated 10th August 2007 was set aside *qua* VPPL upon reading in isolation clause (2) of the Trial Court's order dated 31st March 2015.

25] In any case, in Revision Application NO. 56 of 2015, which came to be disposed of by the Appeal Court vide judgment and order dated 10th February 2016. The Revisional Court in clause (2) of its operative portion very specifically set aside the Trial Court's order dated 31st March 2015 and thereafter, made a modified order which only states that M.A. No. 78 of 2007 filed by the applicants is allowed subject to part payment of Rs.25 lakhs by the applicants to the disputant bank on or before 31st March 2016. It is this order of the Revisional Court which came to be affirmed by this Court by its judgment and order dated 30th March 2016 in Writ Petition (St) No. 9315 of 2016.

26] Therefore, as the position now stands, even stray sentence in clause (2) of the Trial Court's order dated 31st March 2015 no longer survives. Instead, what survives is the

order of the Revisional Court dated 10th February 2016, as affirmed by this Court on 30th March 2016, which only allows M.A. No. 78 of 2007 subject to part payment of Rs.25 lakhs by the applicants in the said application, i.e., by respondent Nos.2 and 3 herein.

27] Now, as noted earlier, the prayers in M.A. No. 78 of 2007 quite categorically seek the setting of the *ex parte* judgment and award dated 10th August 2007 and thereafter seek opportunity only to the applicants, i.e., respondent Nos.2 and 3 to contest the dispute on merits including seeking opportunity for cross-examination of witnesses leading of oral evidence and making of legal and factual submissions. In M.A. No. 78 of 2007, there is no relief applied for in favour of VPPL. From the entire reading of M.A. No. 78 of 2007, it is apparent that respondent Nos.2 and 3 sought for setting aside the *ex parte* judgment and award dated 10th August 2007 *qua* themselves and not *qua* any other parties including VPPL or other guarantors. In such a

situation, therefore, the contention of Mr. Kanetkar deserves no acceptance.

28] The decision of Hon'ble Supreme Court in case of *Mehta Brothers (supra)* is clearly distinguishable. In the said case, a clear finding was recorded that the decree in the said case was indivisible. Based upon such a categorical finding, which was recorded in the facts of the said case, the Hon'ble Supreme Court held that the first proviso to Order 9 Rule 13 of CPC will be attracted and the *ex parte* decree was rightly set aside not only against the defendants, who applied for having it set aside but also against the other defendants.

29] In the facts of the present case, there is no scope to accept Mr. Kanetkar's contention that the *ex parte* judgment and award dated 10th August 2007 was indivisible. Mr. Kanetkar contends that since the liability of the surety is co-extensive with the liability of principal borrower, the *ex parte* judgment and award dated 10th August 2007 is liable to be regarded as indivisible. Such a contention cannot be

accepted because it is well settled that the bank can proceed either against the principal borrower independently or against the sureties independently or proceed against both principal borrower as well as the sureties jointly and severally.

30] Therefore, in terms of *ex parte* judgment and award, the petitioner bank could have independently proceeded against the principal borrower VPPL or could have independently proceed against the sureties including respondent Nos.2 and 3 herein. However, in terms of the orders made by the Trial Court and the Revisional Court in M.A. No. 78 of 2007, the petitioner bank was precluded from proceeding against respondent Nos.2 and 3 because the *ex parte* judgment and award dated 10th August 2007 was set aside *qua* respondent Nos.2 and 3. However, the *ex parte* judgment and award dated 10th August 2007 was never set aside *qua* the other parties to M.A. No. 78 of 2007 including in particular VPPL – principal borrower. There was nothing indivisible in the *ex parte* judgment and award dated 10th August 2007.

31] Besides, there was nothing in the orders made by the Trial Court or the Revisional Court which came to be confirmed by this Court to indicate that there was any conscious exercise of powers under the proviso to Order 9 Rule 13 of CPC after rendering a finding that the *ex parte* judgment and award dated 10th August 2007 was indeed indivisible. Accordingly, in such facts, the decision of the Hon'ble Supreme Court in *Mehta Brothers* (supra) can be of no assistance to VPPL – principal borrower.

32] In fact, this Court, in *Vasant J. Mahajan (supra)* has explained that the proviso to Order 9 Rule 13 of CPC contemplates cases where the decree is of such a nature that it cannot be set aside against one defendant only. Such cases are, for instance, a decree for possession of a house in the joint possession of persons, a partition decree, and a decree for joint possession of property in the joint possession of two or more persons. It is the nature of the decree that is the determining factor and not the reasons behind the decree. Even if the defence of two defendants is common and even if

the decree proceeds on a ground common to all the defendants, the ultimate decree should not be set aside against all the defendants unless it is of such a nature that it cannot be said aside as against one defendant only. Generally, in a case of money decree, the application of the proviso to Order 9 Rule 13 is not attracted. In the said case, this Court, was dealing with a money decree and in this context, this Court held that such a decree could not be regarded as indivisible because a suit for money can be decreed against one of the defendants and dismissed against another or it may be decreed against both the defendants or dismissed against both. To such a decree, the provisions of proviso to Order 9 Rule 13 are not attracted. Such a decree is not one and indivisible.

33] In case of ***Ramchandra Ramgopal (M/s.) Through Jugalkishore s/o. Navalkishore Kothari vs. Kamal Kishore s/o. Onkaramal Rungta and ors. - 2005 (2) Mh.L.J. 623***, this Court has held that the proviso to Order 9, Rule 13 reveals that it is not sufficient that there was

possibility of inconsistent decrees but what is necessary is that the original decree, which is being set aside at the instance of only one defendant, is of such a nature that it cannot be set aside as against that defendant only. If there is such an infirmity in the original decree, then only action as per above proviso of Order 9 Rule 13 is warranted.

34] In the facts of the said case, this Court concluded that the judgment and decree was not of such nature as could not be set aside only against one or more of the defendants, but sustained as against the other/others. In such a situation, this Court held that the action as required by proviso to Order 9 Rule 13 of CPC was not warranted.

35] In the present case, as we have noted, it cannot be said that the Courts had exercised the powers under proviso to Order 9 Rule 13 of CPC. The order of Trial Court dated 31st March 2015 was being misread on account of a little ambiguity in clause (2) of operative portion of the said order. The ambiguity, was explainable by reference to the judgment

dated 31st March 2015. The judgment and order have to be read in tandem and not independent of one another.

36] In any case, the Revisional Court, by its order dated 10th February 2016 cleared whatever ambiguity that may have been found or rather projected in Trial Court's order dated 31st March 2015. Therefore, by way of implication, it is not possible to hold that the Courts had in fact exercised the powers under proviso to Order 9 Rule 13 of CPC and set aside the *ex parte* decree not only *qua* respondent Nos.2 and 3 but also *qua* VPPL – principal borrower as well as some other guarantors.

37] Mr. Kanetkar's contention based upon liability of surety being co-extensive with that of principal borrower, is really untenable in the facts of the present case. Particularly, because such contention proceeds on behalf of the principal borrower VPPL, who, in any case, was clearly liable.

38] Besides, in case of ***Industrial Investment Bank of India Limited vs. Biswanth Jhunjhunwala – (2009) 9 SCC 478***, the Hon'ble Supreme Court, has explained the scope and meaning of expression “*coextensive*” in the context of surety's rights and liabilities. In this case, the Hon'ble Supreme Court has held that and in fact reiterated that the decree holder can execute decree against the guarantor without proceeding against the principal borrower. This means that the decree holder can as well execute decree against the principal borrower without proceedings against the sureties or the guarantors. The Hon'ble Supreme Court has explained that the legal position as crystallised by series of judgments of the Supreme Court itself is that the liability of the guarantor and the principal borrower is coextensive, but not in the alternative. This decision, is a complete answer to the contention of Mr. Kanetkar and on such basis, the contention of Mr. Kanetkar will have to be rejected.

39] The contention of Mr. Kanetkar that since respondent Nos.2 and 3 were the Directors of VPPL – principal borrower

setting aside of *ex parte* decree at behest of respondent Nos.2 and 3 must ennure for the benefit of VPPL - principal borrower, is entirely misconceived. It is settled position in law that VPPL, which is a company incorporated under the Companies Act has its own identity and existence quite independent from its shareholders and even Directors. Therefore, the attempt to confuse the identities of the Directors of the Company with the Company itself cannot be countenanced. It is pertinent to note that in the present case, VPPL - principal borrower was duly served in Dispute No. 391 of 2001 instituted by the petitioner bank and therefore , there was no case for setting aside the *ex parte* judgement and award dated 10th August 2007 *qua* VPPL- principal borrower. Rightly, therefore, VPPL - principal borrower did not even apply for setting aside the *ex parte* judgment and award dated 10th August 2007. M.A. No. 78 of 2007 was only made by respondent Nos.2 and 3 not on behalf of VPPL- principal borrower but on their own behalf and in their capacity as Sureties to the loan account. Therefore, the contention on the basis of Directors of the Company and the

Company being one and the same is required to be rejected as being misconceived. VPPL, cannot, for its own benefit, seek to tear the corporate veil in this manner.

40] For all the aforesaid reasons, the impugned orders dated 2nd January 2017 and 4th January 2017 are liable to be set aside and are hereby set aside. Writ Petition No. 5123 of 2017 is made absolute in terms of prayer clause I].

41] Since, it is now held that the *ex parte* judgment and award dated 10th August 2007 was never set aside *qua* VPPL – principal borrower, the orders dated 8th February 2018 and 22nd February 2018 made by the Trial Court and the Appeal Court, which are impugned in Writ Petition No. 3587 of 2018 will also have to be set aside. This is because the said impugned orders proceed on the basis that the *ex parte* judgment and award dated 10th August 2007 were indivisible and were therefore, set aside not only *qua* respondent Nos.2 and 3, but also *qua* VPPL – principal borrower.

42] For all the aforesaid reasons, both these petitions are disposed of with the following order:

(a) In Writ Petition No. 5123 of 2017, the impugned orders dated 2nd January 2017 and 1st April 2017 made by the Trial Court and the Appeal Court are hereby quashed and set aside. Rule is made absolute in terms of prayer clause [I] of Writ Petition No. 5123 of 2017;

(b) In Writ Petition No. 3587 of 2018, the impugned orders dated 8th February 2018 and 22nd February 2018 made by the Trial Court and the Appeal Court are hereby set aside. Rule is made absolute in terms of prayer clause [I] of Writ Petition No. 3587 of 2017;

(c) The petitioners are directed to refund to respondent No.1-VPPL amount of Rs.32,58,373.14 together with interest thereon at the rate of 7% per annum to be computed from the date the petitioner bank, in pursuance of the statement made to this Court, deposited the demand draft in its account till the date,

the petitioner bank actually refunds this amount to the respondent No.1 VPPL. The petitioner bank is in fact directed to refund the said amount together with interest to respondent No.1 VPPL as expeditiously as possible and in any case within a period of six weeks from today. If this is not done, then, the amount, will carry interest at the rate of 9% per annum instead of 7% per annum;

(d) If for any reason, respondent No.1 VPPL refuses to accept the aforesaid amount of Rs.32,58,373.14 together with interest thereon within six weeks from today, then, the petitioner bank is at liberty to deposit the said amount in this Court within a period of six weeks, after giving due notice to respondent No.1 -VPPL or their advocate on record in these petitions. Thereafter, respondent No.1 VPPL will be at liberty to withdraw this amount unconditionally;

(e) Rule is accordingly made absolute in both the petitions in the aforesaid terms;

(f) In the facts and circumstances of the present case, there shall be no order as to costs;

(g) All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

43] At this stage, Mr. Kanetkar, learned counsel for the respondent Nos.1 to 3, seeks stay on the implementation of the order now made. The only implementation, which is contemplated is refund of amount to respondent No.1. For that six weeks time has already been granted to the petitioner. Accordingly, there is no case made out for grant of any stay.

(M. S. SONAK, J.)