

Jayant D.
Kandarkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 10514 OF 2018

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Jayant D. Kandarkar
Date: 2019.11.06
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1. M/s. Kartik International a Sole Proprietary Firm, carrying on business at 602, Tuilsiani Chamber, 6th floor, Tulsiani Chambers, Nariman Point, Mumbai-400021
2. Ranakpurji Exports & Industries Limited, a company incorporated under the Companies Act, 1956 and having its Bombay Office at 602, 6th floor, Tulsiani Chambers, Nariman Point, Mumbai-400021
3. Yogendra Laxminarayan Taparia of Indian Inhabitant, residing at 'Nymph' 2-B, Narayan Dabholkar Road, Mumbai-400006.
4. Laxminarayan Taparia Indian Inhabitant, residing at Nymph 2-B, Narayan Dabholkar Road, Mumbai-400006.
5. Girijadevi Yogendrakumar Taparia Indian Inhabitant, residing at Nymph 2-B, Narayan Dabholkar Road, Mumbai-400006.

6. Ashadevi Laxminarayan
Taparia Indian Inhabitant, Ori. Appellants/
residing at Chinar, B-51, Rafi Borrowers/
Ahmed Kidwai Road, Mumbai- Guarantors
400031 .. Petitioners

Vs.

1. Central Bank of India A body
corporate constituted Under
the Banking Companies
(Acquisition And Transfer of
Undertakings) Act, 1970
having its head office at
Chandermukhi, Nariman
Point, Bombay-400 021 and a
Branch amongst others at
Mahatma Gandhi Road, Fort
Mumbai 400001 and known as
Its Bombay Main Office .. Ori.Lender
2. M/s. Pink Lady a sole
proprietary firm carrying on
business at 707, Vijay Shri
Road, Tatya Gharpure Path, Purchaser/
Girgaon, Mumbai-400 004 .. Respondent No.2
3. Invent Assets Securitisation
and Reconstruction (P) Ltd.
having registered office at 104, Assignee /
Jolly Maker Chambers No.2, Ori. Respondent
225, Nariman Point, Mumbai- No.3/
400021 .. Respondents

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Mr. R.D. Soni i/b Mr. Yogesh K. Deshpande for Petitioners
Mr. D.D. Madon Senior Counsel i/b Law Frame for
Respondent No.3

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**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.**

DATED : NOVEMBER 05, 2019

ORDER [PER PRADEEP NANDRAJOG, C.J.] :

1. To be fair to learned counsel for the petitioners, at the outset we record the fact that we have not permitted learned counsel to read the evidence before the learned Debt Recovery Tribunal. The reason is that we are exercising power of superintendence under Article 226 of the Constitution of India pertaining to the judgment dated 27th June 2018 passed by the learned Debt Recovery Appellate Tribunal, Mumbai dismissing Appeal No. 69/2010 and as a consequence upholding the judgment/order dated 6th November 2009 passed by the learned Debt Recovery Tribunal, and our task is to see whether the Fora's below have acted within the confines of their jurisdiction.

2. The relevant facts are that the 1st Respondent Bank

filed an Original Application before the Debt Recovery Tribunal pleading that Kartik International a Sole Proprietary Firm of Ranakpurji Exports & Industries Limited had availed credit facilities. Yogendra, Laxminarayan, Girijadevi and Ashadevi impleaded as Respondent Nos. 3 to 6 were Guarantors. As per the Original Application three credit facilities being Letter of Credit (Inland Facility), Packaging Credit Facility and Export Bill Discounting Facility were extended to the principal debtor. From time to time the credit limits were enhanced. It was pleaded that there were letters acknowledging outstanding amounts in the three accounts. It was pleaded that a sum of ₹ 88,32,573/- was outstanding in respect of the packaging credit amount. ₹ 2,34,75,195/- was outstanding in respect of the Export Bill Discounting Facility and ₹ 14,75,855.10 was payable under the General Current Account.

3. In the Written Statement-cum-Counter-claim filed it was pleaded that the Bank had not given credit in respect of 44 bills. Set-off was prayed for.

4. The Defendants were required to pay court fee on the amount claimed as per the set-off and the same being not paid as recorded in the order dated 5th August 2003 the

counter-claim pertaining to the set-off was dismissed.

5. The order has attained finality, needless to state the defendants led no evidence, and indeed could not, that credit of 44 bills was not granted. The Bank having proved the Statement of Account as also the Balance Confirmation acknowledgments by the principal debtor, projected defence by way of counter-claim having not been allowed to be proved and there being no evidence to prove the same, the claim of the Bank was decreed. The appeal has failed.

6. Suffice it to record that once the plea of set-off was not permitted to be proved and the order declining the same not being challenged, attempt by the learned counsel for the petitioners to take us through the pleadings has rightly been turned down by us for the reason it would be useless to note the pleading concerning the said 44 bills. The Courts below have rightly held that defence concerning credits relatable to the 44 bills had to be ignored.

7. Pertaining to a letter dated 3rd October 1996 a word needs to be spoken. The said letter has been referred to by the learned Debt Recovery Appellate Tribunal in paragraph 28 of the impugned order. In the said letter written by the principal

debtor not a whisper was made regarding the 44 bills, rather the letter would show that the annexures thereto tallied with the claim of the Bank in respect of the bills save and except one. Deduction drawn by the Appellate Tribunal is that the said letter would show that an illusory defence was raised qua 44 bills.

8. Ground taken in the writ petition that the said letter was not a part of the record of Debt Recovery Tribunal is negated from the fact that in the writ petition the said letter has been filed by the petitioners and it is not the case of the petitioners that the principal debtor did not write the said letter.

9. The Writ Petition is dismissed.

SMT. BHARATI DANGRE, J.

CHIEF JUSTICE