IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COM. APPEAL (L) NO. 184 OF 2018
IN
COM. SUIT NO. 3 OF 2001

Dena Bank – A body corporate
constituted under the Banking Companies
(Acquisition and Transfer of Undertaking)
Act, 1970, having its branch at
Gol Deval Branch,
Allana Building, Gol Deval, 436,
M.A. Road, Mumbai - 400 004 .. Appellant /
Ori. Defendant

<u>IN THE MATTER BETWEEN:</u>

Dena Bank – A body corporate
constituted under the Banking Companies
(Acquisition and Transfer of Undertaking)
Act, 1970 having its branch at
Gol Deval Branch,
Allana Building, Gol Deval, 436,
M.A. Road, Mumbai - 400 004 .. Appellant /
(Ori. Defendant)

Vs.

Ellyoung Metal Products Pvt. Ltd.
A Company incorporated under the
Companies Act, 1956, having its
office at 96, C.P. Tank Road,
Mumbai-400 004 .. Respondent
(Ori. Plaintiff)

....

Mr. Anup Khaitan & Co. Advocate for Appellant
Ms. Manasi Nandu I/b Devanshu Desai for Respondent

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CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.

DATED : APRIL 16, 2019

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

1. At the outset, learned counsel for the appellant states that from 1 April 2019 Dena Bank has been merged with Bank of Baroda. On an oral application made, Bank of Baroda is substituted as the appellant in place of Dena Bank. Correction be made in the memo of appeal incorporating the said fact.

2. The appeal is listed for admission. It challenges the judgment dated 14 September 2017.

3. Relevant facts are that: plaintiff / respondent had entered into an agreement with a company in South Korea for purchase of machines, spares and tools. At the asking of the

said company, a Letter of Credit was opened. Erstwhile Dena Bank was the banker of the plaintiff / respondent and at the request of the client opened the Letter of Credit. It was a term of the agreement between the parties that the amount as per the Letter of Credit could be secured by the respondent by depositing a sum of Rs.1.9 crores and the deposit was effected.

4. A dispute arose between the beneficiaries and the plaintiff. The plaintiff filed Suit No. 1528 of 1996 against the appellant in respect of the Letter of Credit. Interim orders were passed.

5. The said suit was compromised. The Korean company agreed to receive 50% of the credit amount as per the Letter of Credit. The said amount was paid.

6. The amount paid to the Korean company had to be adjusted from the fixed deposit. The remainder had to be credited to the account of the plaintiff. The plaintiff wrote a letter to credit the balance amount to its account. The bank took a stand that the promoters of the plaintiff company were promoters of other companies which owed monies to Dena Bank and there was an agreement to adjust the balance amount

against the dues of the said companies.

7. The plaintiff disputed the fact and proceeded to file a suit for recovery of the amounts lying to its credit after adjusting the amount payable to Korean company from out of the fixed deposit.

8. On leave to defend being granted, the suit proceeded further.

9. On 11 June 2015 eight issues came to be settled on the pleadings of the parties as under:

1. Whether the suit is filed within limitation ?
2. Whether the defendant proves that the suit is bad for non-joinder of necessary parties ?
3. Whether the defendant proves that the plaintiff is a part of Mardia Group of Companies and in connivance with the ex-directors of Mardia Group the plaintiff is aiding the Mardia Group of Companies to escape their liabilities to the defendant ?
4. Whether the defendant proves that the plaintiff had agreed to adjust the balance amount of the margin money against the outstanding dues of the Mardia Group of Companies ?
5. Whether the defendant proves that the money

deposited by the plaintiff with the defendant bank was to divert the funds of the Mardia Group of Companies ?

6. Whether the plaintiff prove that the Mardia Group of Companies in any event have settled all the claims of the defendant bank ?
7. Whether the plaintiff's prove that they are entitled to a decree in the sum of Rs. 1,36,94,643/- together with interest at 11% p.a. on the principal sum of Rs.1,00,28,756/- from the date of the suit until the payment / realization ?
8. What decree ? What order?

10. Documents were filed. Then plaintiff led evidence. Witness was the Director of the plaintiff. The defendant did not cross-examine the plaintiff's witness.

11. The appellant / defendant did not lead any evidence. The evidence was closed.

12. Impugned judgment was rendered on 14 September 2017. On issue no.1 being the issue of limitation, the learned Judge took the view, and rightly so, that cause of action would arise on 30 March 1999 when the dispute with Korean company came to be resolved. 50% of Letter of Credit amount was paid to the Korean company. The fixed deposit had to be broken. Balance amount had to be paid to the plaintiff.

13. In the memo of appeal, no challenge has been made to the finding returned on issue no.1.

14. On issue Nos. 2, 3, 4 and 5 the learned Single Judge has held that the onus was on the defendant. No evidence being led by the defendant, the issues had to be decided against the defendant.

15. In the memo of appeal, we find no ground urged to challenge the said findings.

16. On issue no.6, the learned Single Judge has noticed that the witness of the plaintiff was not cross-examined. The learned Judge has noted the positive statement made on oath that different companies, promoters whereof may be common, were separate entities and had fully repaid the borrowings, was not challenged. In that, the witness was not cross-examined.

17. Once again, we find no ground urged in the memo of appeal to question the findings on issue no.6.

18. Issue no.7 was a matter of accounts. The money had

been paid.

19. What then, is a challenge in the appeal ? The appeal simply makes a narration of the various events which took at the trial. It is pleaded that on account of the defendant not being able to lead evidence and evidence being closed the Counsel informed the bank that right to lead evidence was closed.

20. There is no challenge in the appeal to the order closing right of the defendant to lead evidence. Thus, strictly speaking, there is no worthwhile ground urged in the appeal.

21. The appeal is dismissed at the admission stage itself.

22. No costs.

N.M.JAMDAR, J. **CHIEF JUSTICE**

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