IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2465 OF 2021 WITH WRIT PETITION NO. 2466 OF 2021

W.P.NO.2465/2021.

1. Kaluram Food Products Ltd.,
   a Pvt. Ltd. Company registered under
   the Indian Companies Act, 1956,
   having its Registered Office at
   Kirana Bazar, Akola – 444 001, through
   its Director – Mr. Ajayprakash Kaluram
   Agrawal.

2. Shivprakash S/o. Kaluram Ruhatiya,
   Aged about 64 years, Occ. Business,

3. Shreeprakash S/o. Kaluram Ruhatiya,
   Aged about 61 years, Occ. Business,

   Both R/o. Durga Chowk, Akola.

…. **PETITIONERS.**

// **VERSUS** //

1. Punjab National Bank,
   through its Branch Manager,
   Shraogi Towers Branch,
   Tilak Road, Akola – 444 001.

2. HDFC Bank Ltd.,
   through its Branch Manager,
   Sethi Heights, Ground Floor,
   Z.P. Road, Akola – 444 001.

…. **RESPONDENTS.**

Shri S.P.Bhandarkar, Advocate for both Petitioners.
Shri A.S.Jaiswal, Sr.Adv. a/b. Shri V.K.Kolte, Adv. for Resp.No.1.
Shri P.G.Mewar, Advocate for Respondent No.2.

WITH

W.P.NO.2466/2021.

1. M/s. Omprakash Shivprakash,
   a registered Partnership Firm, having
   Office at Old Kirana Bazar, Akola–444 006,
   through its Partner – Shri Ajayprakash
   Kaluram Agrawal.

2. Shivprakash S/o. Kaluram Ruhatiya,
   Aged about 64 years, Occ. Business,
   R/o. Durga Chowk, Akola, Tahsil &
   District : Akola.

3. Shreeprakash S/o. Kaluram Ruhatiya,
   Aged about 61 years, Occ. Business,
   R/o. Durga Chowk, Akola, Tahsil &
   District : Akola.

…. PETITIONERS.

// VERSUS //

1. Punjab National Bank,
   Branch at Shrawagi Towers,
   Tilak Road, Akola – 444 001
   through its Branch Manager.

2. HDFC Bank Ltd.,
Branch at Sethi Heights, Ground Floor,
Opposite Collector Office, Z.P. Road,
Akola – 444 001, through its
Branch Manager,

.... **RESPONDENTS.**

Shri Avinash Gupta, Sr.Advocate a/b. Ms Nidhi Dayani, Advocate for Petitioners.
Shri A.S.Jaiswal, Sr.Adv. a/b. Shri V.K.Kolte, Adv. for Resp.No.1.
Shri P.G.Mewar, Advocate for Respondent No.2.

CORAM : SUNIL B. SHUKRE AND ANIL S. KILOR, JJ.

DATE OF RESERVING THE JUDGMENT : 21/10/2021
DATE OF PRONOUNCING THE JUDGMENT: 17/11/2021

JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.

2. **RULE**. Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.

3. In both these petitions, a challenge is raised to the demand of 2% of the sanctioned loan amount towards prepayment charges by the respondent No.1 bank from the petitioners. Hence, both these petitions are heard together.

4. In Writ Petition No. 2465 of 2021 the petitioner No.1, a Private Limited Company, engaged in a business of manufacture, sale and purchase of Soyabean and Edible Oils and petitioner Nos. 2 and 3, who are the Directors of petitioner No.1-Company, have offered their properties as collateral securities against the loan taken by petitioner No.1-Company from respondent No.1-Punjab National Bank.

5. Petitioner No.1 in Writ Petition No.2466 of 2021, a sister concern of petitioner No.1 in Writ Petition No.2465 of 2021, had loan accounts, cash credit accounts with the respondent No.1-Punjab National Bank and for the same, an agricultural land and a plot in M.I.D.C. area Akola, owned by the petitioners No. 2 and 3, who are the Directors of petitioner No.1, were mortgaged as collateral securities for cash credit loan facility.

6. In both the cases, some issues were cropped up between the petitioners and the respondent No.1-Bank. It is alleged that since the

respondent No.1-Bank did not take any remedial measure in spite of repeated requests by the petitioners, the aforesaid loan facilities under the takeover facilities were decided to be shifted to respondent No.2 bank, by the petitioners. Accordingly, the formalities were completed and the respondent No.2 granted working capital facilities to the petitioners. The respondent No.2 Bank in pursuance to the same, issued pay order dated 02/11/2020 for Rs.1,15,00,000/- towards final payment of facilities availed by the petitioner No.1 (in Writ Petition No.2466 of 2021) and requested the respondent No.1 to release securities held by respondent No.1-Bank, in favour of respondent No.2-Bank.

7. Whereas, in Writ Petition No.2465 of 2021, respondent No.2 issued pay order dated 02/11/2020 for Rs.4,35,00,000/- towards full and final payment and similar request to release the securities mentioned in the letter issued by respondent No.2, was made vide letter dated 18/11/2020 addressed to the Manager of the respondent No.1-Bank.

8. However, vide letter dated 10/12/2020 the respondent No.1-Bank demanded penal interest @ 2% towards prepayment charges from the petitioner No.1 in both the petitions. The validity and legality of the said demand has been questioned in the present writ petitions. The prayers made in both the petitions are as follows:

Prayer clause in Writ Petition No.2465 of 2021

"i) hold and declare that Clause-28(iii) of the Deed of Hypothecation dated 16/11/2017 (Annex-B) executed by the petitioner No.1 Company in favour of the respondent No.1/Punjab National Bank is illegal and unenforceable being contrary to Sections 23 and 74 of the Indian Contract Act and violative of Articles 14, 19(1)(g) and 300A of the Constitution of India and accordingly be pleased to quash and same;

ii) quash and set aside the communication dated 03/11/2020 (Annex-F) issued by the respondent No.2/HDFC Bank to the petitioner No.1 Company to deposit 2% pre-payment charges alongwith GST on sum of Rs.22.89 Crores for closure of accounts;

iii) issue a writ of mandamus or any other appropriate writ or order directing the respondent No.1/Punjab National Bank to return the title deeds pertaining to Agricultural Land bearing Survey No.36/1, admeasuring 4637.85 Square Meters of Village-Umari, Tahsil & Distict-Akola and Gut Nos.85 and 86 of Village Anjankhed, Tahsil and District Washim, admeasuring 1.4150 HR to the petitioners or the respondent No.2/HDFC Bank Ltd. without insisting upon payment of prepayment charges as demanded in the letter dated 10/12/2020 (Annex-H);

iv) pass suitable interim orders directing the respondent No.1/Punjab National Bank to return the title deeds pertaining to Agricultural Land bearing Survey No.36/1, admeasuring 4637.85 Square Meters of Village-Umari, Tahsil & Dist-Akola and Gut Nos.85 and 86 of Village Anjankhed, Tahsil and District Washim, admeasuring 1.4150 HR to the petitioners or the respondent No.2/HDFC Bank Ltd. without insisting upon payment of prepayment charges as demanded in the letter dated 10/12/2020 (Annex-H), pending the final disposal of the present petition;

v) grant ex-parte ad-interim relief in terms of Prayer Clause-(iv) above;

vi) grant any other appropriate relief, which this Hon'ble Court deems fit and proper, in the facts and circumstances of the case."

Prayer clause in Writ Petition No.2466 of 2021

"i) hold and declare that Clause-19(h) in the Overall Terms and Conditions of the sanction letter dated 28/11/2018 (Annex-A) issued by the respondent No.1/Punjab National Bank is illegal and uneforceable being contrary to Sections 23 and 74 of the Indian Contract Act and violative of Articles 14, 19(1)(g) and 300A of the Constitution of India and accordingly be pleased to quash and same;

ii) quash and set aside the communication dated 10/12/2020 (Annex-K) issued by the respondent No.1/Punjab National Bank to the petitioner No.1 Firm to deposit 2% pre-payment charges alongwith GST on sum of Rs.13.00 Crores for closure of accounts;

iii) issue a writ of mandamus or any other appropriate writ or order directing the respondent No.1/Punjab National Bank to return the title deeds pertaining to MIDC Plot No.66, Phase-III, Akola

MIDC Area, Akola and Agricultural Land bearing Survey No.36/1, admeasuring 4637.85 Square Meters of Village-Umari, Tahsil and District-Akola to the petitioners or the respondent No.2/HDFC Bank Ltd. without insisting upon payment of prepayment charges as demanded in the letter dated 10/12/2020 (Annex-K);

iv) pass suitable interim orders directing the respondent No.1/Punjab National Bank to return the title deeds pertaining to MIDC Plot No.66, Phase-III, Akola MIDC Area, Akola and Agricultural Land bearing Survey No.36/1, admeasuring 4637.85 Square Meters of Village-Umari, Tahsil and District-Akola to the petitioners or the respondent No.2/HDFC Bank Ltd. without insisting upon payment of prepayment charges as demanded in the letter dated 10/12/2020 (Annex-K), pending the final disposal of the present petition;

v) grant ex-parte ad-interim relief in terms of Prayer Clause-(iv) above;

vi) grant any other appropriate relief, which this Hon'ble Court deems fit and proper, in the facts and circumstances of the case."

9. We have heard learned counsel for the respective parties.

10. Shri Avinash Gupta, learned Senior Advocate assisted by Ms Nidhi Dayani, learned counsel for the petitioners, submits that once the total amount outstanding against petitioner No.1 was paid to the respondent No.1 under the takeover facility, the respondent

No.1-Bank is duty bound to release the securities held by respondent No.1-Bank in favour of the respondent No.2-Bank, who has issued pay orders for repayment of the loan of the petitioner No.1.

11. It is submitted that withholding of securities despite the payment of outstanding loan amount is arbitrary and unreasonable. It is argued that, the respondent No.1-Bank is a "State" within the meaning of Article 12 of the Constitution of India and was bound to follow the equality clause contained in Articles 14 of the Constitution of India and act in fair and non-arbitrary manner. For this purpose, reliance is placed on the judgment in the case of *Punjab National Bank ..vs.. Astamja Dash*[1].

12. It is further pointed out that in an Undertaking, submitted by the petitioner No.1 and its partners, Clause 28(iii) clearly states that borrower agrees to pay Facility Cancellation Charges @ nil% on the sanctioned limit, irrespective of the period the said facilities are

1 (2008) 14 SCC 370

availed of from the bank, in the event of cancellation of limit by payment not made out of own sources. It is submitted that in view of the said clause respondent No.1-Bank has no authority to demand 2% amount towards prepayment charges from the petitioners. For this purpose, reliance has been placed on the judgment of Delhi High Court in the case of *DLF Limited ..vs.. Punjab National Bank*[2].

13. Shri Gupta, learned Senior Advocate would further point out the correspondence between respondent No.2-Bank and respondent No.1-Bank for release of securities, dated 18/11/2020. It is further pointed out that respondent No.2-Bank vide said letters made a request to the respondent No.1 that in case, release of charge and security over the mortgaged and/or hypothecated and/or pledged assets is withheld by the respondent No.1-Bank for any reason or in case of any reservations in handing over of the documents in respect of the securities to respondent No.2-Bank, the funds so sent be immediately returned to respondent No.2-Bank through a pay order. It is urged that, in spite of the said request, the

2 2011 SCC OnLine Del 2465

respondent No.1-Bank failed to return back the amount to the respondent No.2-Bank by issuing the pay order on failure of release of securities held by respondent No.1-Bank. It is thus, submitted that the whole action on the part of the respondent No.1-Bank is arbitrary and unreasonable.

14. Shri Bhandarkar, learned counsel for the petitioner in Writ Petition No. 2465 of 2021 reiterates the contentions raised by the petitioner in Writ Petition No.2466 of 2021 and prays for declaration that the demand of prepayment charges, at the instance of the respondent No.1-Bank, is illegal and not sustainable in the eyes of law.

15. Shri Anand Jaiswal, learned Senior Advocate, assisted by learned counsel Shri V.K. Kolte, for respondent No.1-Punjab National Bank, at the outset, points out that no arguments have been advanced in relation to prayer clause (i) and therefore, it be treated as 'not pressed' by the petitioners.

16. The learned Senior Advocate has opposed the present petition and he submits that the issues involved in both these petitions are arising out of a contractual matter. It is submitted that the writs are impermissible when the allegation is solely with regard to a contractual right or duty. It is thus, submitted that the present petitions are not maintainable.

17. On merit, the learned Senior Advocate pointed out the relevant clauses mentioned in the terms and conditions of sanction letter signed by both the parties and it is submitted that Clause 18 of the same permits the respondent No.1-Bank to charge penal interest @ 2% in the eventuality of prepayment through takeover facility by other Bank or financial institution. Thus, he submits that as per the agreed terms and conditions of the sanction letter, the demand of 2% prepayment charges has been made by respondent No.1-Bank, which cannot be termed as arbitrary or unreasonable. By arguing so, he prays for dismissal of the writ petition.

18. Shri Mewar, learned counsel appearing for respondent No.2-Bank argues that though a request was made by the respondent No.2-Bank to the respondent No.1-Bank to refund back the amount by issuing pay orders in case the respondent No.1-Bank withholds the securities, the amount has not been paid back to the respondent No.2.

19. The learned Senior Advocate Shri Gupta, in reply to the preliminary objection raised by learned Senior Advocate Shri Jaiswal as regards maintainability of the petition, has submitted that in contractual matters, the writ petition is maintainable and for this purpose, he has relied upon a judgment of the Hon'ble Supreme Court of India in the case of *Noble Resources Ltd..vs. State of Orissa*[3], and the judgment in the case of *Central Bank of India vs.. Devi Ispat Ltd.*[4].

20. To consider the rival contentions of the parties, we have perused the record and gone through the judgments cited by both the parties.

3 (2006) 10 SCC 236
4 (2010) 11 SCC 186

21. The learned counsel for the petitioners, have not argued or made any submissions as regards prayer clause (i) and therefore, we are of the opinion that in absence of any arguments advanced on prayer clause (i) it is not necessary for us to consider the prayer clause (i), accordingly, we dismiss the petition as regards prayer clause (i).

22. We move further to consider the contentions raised by both the parties as regards other prayer clauses i.e. prayer clause (ii) and (iii) in both the petitions. There is no dispute that the respondent No.2-Bank, while granting working capital facilities and providing take over facilities in favour of the petitioners in both the petitions, paid the outstanding amount due to the petitioner No.1 in both the petitions, to the respondent No.1 by orders dated 02/11/2020, amounting to Rs.4,35,00,000/- and Rs.1,15,00,000/-, respectively. There is also no dispute that in spite of the demand by the respondent No.2 to release the securities, held by respondent No.1 in favour of respondent No.2, the securities were not released on the ground that the petitioners in both the petitions have not

paid 2% prepayment charges, even though the demand was made by respondent No.1.

23. In the above referred backdrop, a question arises, whether the demand of 2% of the sanctioned loan amount towards prepayment charges, raised by respondent No.1, is as per the agreed terms and conditions of the loan facility?

24. On perusal of the record, it is revealed that a sanction letter stipulating terms and conditions which had been accepted and countersigned by the petitioners. Clause 18(g) of aforesaid terms and conditions, which reads thus:

> "*18. The Bank shall charge penal interest @2% under the following circumnstances:*
> *(a) to (f) …..*
> *(g) Any other eventuality/situation to be decided by the bank.*"

25. On the other hand a clause in the undertaking submitted by the petitions to the respondent No.1 Bank shows that the borrower agrees to pay Facility Cancellation Charges @nil% on the sanctioned limit irrespective of the period the said facilities are

availed of from the bank in the event of cancellation of limit by payment not made out of own sources.

Thus, both the above referred clauses are in conflict with each other.

26. As far as the submission of the petitioners that the respondent No.1-Bank ought to have repaid the amount to the respondent No.2-Bank on not releasing the securities is concerned, it is pertinent to note here that, the respondent No.2-Bank has not initiated any action for recovery of the amount from the respondent No.1-Bank, on failure of the respondent No.1-Bank to release the securities in favour of the respondent No.2-bank. Except the letter/correspondence no steps have been taken by the respondent No.2 against respondent No.1 for recovery of the amount. Moreover, in none of the said letter-correspondence, the petitioners are party. In the circumstances, the grievance relating to making the payment back by the respondent No.1 to the respondent No.2 cannot be raised in these petitions at the instance of the petitioners.

27. It is pertinent to note here that the petitioners have not produced on record the sanction letter, if any, issued by respondent No.2-Bank and signed by both the parties, pointing out the terms and conditions of sanction of takeover facility by respondent No.2-Bank. In absence of any such document on record, it is difficult to determine the rights of the petitioners to ask for repayment by respondent No.1 in favour of respondent No.2, on failure of respondent No.1 to release the securities.

28. The Hon'ble Supreme Court of India in the case of *Bharat Coking Coal Ltd. ..vs.. Amr Dev Prabha*[5] has held thus:

> *"29. This position of law has been succinctly summed up in Tata Cellular v. Union of India, where it was famously opined that: (SCC pp.677-78, para 77)*
>
> > *"77. ... Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :*

5 (2010) 16 SCC 759

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it.
(ii) Irrationality, namely, Wednesbury unreasonableness,
(iii) Procedural impropriety."

30. But merely because the accusations made are against the State or its instrumentalities does not mean that an aggrieved person can bypass established civil adjudicatory processes and directly seek writ relief. In determining whether to exercise their discretion, the writ courts ought not only confine themselves to the identity of the opposite party but also to the nature of the dispute and of the relief prayed for. Thus, although every wrong has a remedy, depending upon the nature of the wrong there would be different forums for redress.

31. In cases where a constitutional right is infringed, writs would ordinarily be the appropriate remedy. In tender matters, such can be either when a party seeks to hold the State to its duty of treating all persons equally or prohibit it from acting arbitrarily; or when executive actions or legislative instruments are challenged for being in contravention to the freedom of carrying on trade and commerce. However, writs are impermissible when the allegation is solely with regard to violation of a contractual right or duty. Hence, the persons seeking writ relief must also actively satisfy the Court that the right it is seeking is one in public law, and not merely contractual. In doing so, a balance is maintained between the need for commercial freedom and the very real possibility of collusion, illegality and squandering of public resources."

29. It is thus, clear that merely because the accusations made are against the State or its instrumentality, it does not mean that an aggrieved person can bypass established civil adjudicatory processes and directly seek writ relief. In determining whether to exercise their discretion, the writ courts ought not only confine themselves to the identity of the opposite party but also to the nature of the dispute and of the reliefs prayed for. The writs are impermissible when the allegation is solely with regard to violation of a contractual right or duty and unless the right is one in public law, and not merely contractual.

30. The learned counsel for the petitioners have placed reliance on the judgments of the Hon'ble Supreme Court of India in the case of *Noble Resources Ltd.* (supra) and *Central Bank of India* (supra) to urge that even in contractual matters the writ petition would be maintainable.

31. In the case of *Noble Resources Ltd.* (supra), the Hon'ble Supreme Court of India has held that, it is trite that if an action on

the part of the State is violative of the equality clause contained in Article 14, writ petition would be maintainable even in the contractual field. However, the Hon'ble Supreme Court of India has further observed that a distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny is more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14. It is further observed that where a public law element is involved, judicial review would be permissible.

32. In the case of *Central Bank of India* (supra), the Hon'ble Supreme Court of India has held thus:

> "*28. It is clear that, (a) in the contract if there is a clause for arbitration, normally, a writ court should not invoke its jurisdiction; (b) the existence of effective alternative remedy provided in the contract itself is a good ground to decline to exercise its extraordinary jurisdiction under Article 226; and (c) if the instrumentality of the State acts contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would be*

> *maintainable. However, a legal right must exist and corresponding legal duty on the part of the State and if any action on the part of the State is wholly unfair or arbitrary, writ courts can exercise their power.* In the light of the legal position, writ petition is maintainable even in contractual matters, in the circumstances mentioned in the earlier paragraphs."

33. There is no dispute about the legal position of law as laid down in both the above referred cases that contractual matters are not totally beyond the scope of judicial review albeit its ambit is limited and unless the instrumentalities of the State act contrary to the public good, or public interest or act unfairly, unjustly, unreasonably, and/or in a discriminatory way as being violative of Article 14 of the Constitution of India in its contractual or statutory obligation, writ petition would not be maintainable.

34. In the present case, the petitioners failed to point out that the respondent No.1 in the present matter has acted contrary to the public good, public interest, unfairly, unjustly, unreasonably discriminatory and violative of Article 14 of the Constitution of India in its contractual obligations. On the contrary, from the terms

and conditions stipulated in the sanction letter which has been accepted and countersigned by the petitioner there is a specific clause in respect of prepayment of charges @2%. The question involved in this petition is as regards 2% prepayment charges.

35. The said question is a pure matter of contract between the petitioners and respondent No.1 and it being a matter of contract, it is in the realm of private law and therefore, it is governed by the provisions of the contract. Any dispute relating to the interpretation of the terms and conditions of such contract cannot be agitated in writ petition and therefore, the judgments cited by the petitioners are distinguishable on facts and are of no help to the petitioners.

36. Having held so, we have no hesitation to hold that looking to the controversy involved in the present petition, the present petitions are not maintainable, accordingly, we pass the following order:

i) Both the writ petitions are **dismissed**.

ii) The parties are at liberty to resort to alternate remedy as available in law, if so advised.

Rule stands discharged accordingly. No order as to costs.

(ANIL S. KILOR, J) (SUNIL B. SHUKRE, J.)

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