URMILA PRAMOD INGALE
Digitally signed by URMILA PRAMOD INGALE
Date: 2022.05.07 13:55:12 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.1629 OF 2020

1] **Rajendra Manohar Kowli,**
Age 52 years, Occu. Architect,
R/at : 24, Dayan Sagar, S.K. Bole
Road, Dadar, Mumbai – 400 028.

2) **Manohar Bhaskar Kowli,**
(Since Deceased through Legal
Representatives)

2(a) **Ms. Rekha Manohar Kowli**
(Daughter)(Since Deceased)

2(b) **Ms. Sandhya Manohar Kowli**
(Daughter)
Age : 40 years, Occ. : Business,
Both of them R/at : 24, Dnyan Sagar,
S.K. Bole Road, Dadar,
Mumbai – 400 028. … **Petitioners**

-- Versus –

Bank of India,
Banking Company Incorporated under the
Banking Companies (Acquisition and
Transfer of Undertakings) Act, 1970, having
its Head Office at Express Towers,
Nariman Point, Mumbai-21
And a Branch amongst others at
Dadar (W), Mumbai. … **Respondents**

=-=
Mr. Sudhir V. Somalwar, Advocate for the Petitioners.
Mr. O.A. Das, Advocate for the Respondent.
=-=

CORAM : DIPANKAR DATTA, CJ &
M.S. KARNIK, J.

RESERVED ON : 14/12/2021
PRONOUNCED ON : 06/05/2022

JUDGMENT : (Per M.S. Karnik, J.)

1) The petitioners invoke the jurisdiction of this Court under Article 226 and 227 of the Constitution of India challenging an order dated 26/12/2019 passed by the Debts Recovery Appellate Tribunal ('DRAT' for short) in Appeal No.153/2005. The appeal before the DRAT arose from an order passed by the Debts Recovery Tribunal No.II, Mumbai ('DRT' for short), which came to be challenged by the petitioners before the DRAT, Mumbai. The petitioners, *inter alia*, pray for the following reliefs:

> (a) That, this Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ in the nature of Certiorari calling for the records and proceedings of the Order dated 26/12/2019 passed by DRAT in Appeal No.153 of 2005, this Hon'ble Court be pleased to quash and set aside in impugned Order/Judgment dated 26/12/2019.
>
> (b) Quashed and set aside the order passed by DRT-II, Mumbai. Respondents pay compensation of ₹50,00,00,000/- (Rupees Fifty Crores Only) to Petitioner along with interest rate at 18% p.a.

2] The fact of the case in brief are as under :

(A) On a request made by the petitioners vide their letter dated 12/07/1994, the respondent-Bank of India (hereafter 'Bank' for short) paid a sum of ₹27,00,000/- to the beneficiary of the bank guarantee and later after making adjustment of the deposits belonging to the petitioners lying with the Bank, a sum of ₹7,00,000/-was found to be payable by the petitioners to the Bank. On 19/07/1994, the documents being Demand Promissory Note, Letter of Lien and Set Off, Letter of Continuity of Security were obtained from the petitioners. As the petitioners failed to pay the outstanding amount, the Bank issued a notice and thereafter filed a suit bearing No.3272/1997 against the petitioners in this Court for recovery. The said suit was subsequently transferred to the DRT upon its establishment as per the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereafter 'RDDB Act' for short).

(B) During the pendency of the suit, original defendant No.1 expired, whereupon his legal representatives are brought on record as defendant No.1(a) and defendant No.1(b) [present petitioner Nos.2(a) and 2(b)]in the said suit. Petitioner No.1 (original defendant No.2) filed written statement which came to be adopted by petitioner Nos.2(a) and 2(b) disputing the claim of the Bank.

(C) It is the case of the petitioners that the bank guarantee was originally obtained from the United Western Bank on a commission of 0.5% on the guarantee amount. The Official of the Bank of India approached the petitioners with an offer that they propose to charge less than 0.5% commission on the guarantee amount. The petitioners thereupon shifted all the fixed deposits from United Western Bank to the Bank. The bank guarantee for ₹27,00,000/- is obtained from the Bank, but contrary to the promise, the Bank charged commission at 1%. The petitioners disputed such charge which was contrary to the promise made, by exchanging correspondence. The claim of the Bank, according to the petitioners, is not tenable. The petitioners gave a number of Fixed Deposit Receipts (hereafter 'FDR' for short) to the Bank in joint names as security. According to the Petitioners calculations, the interest accrued on these FDRs is to the tune of ₹10,00,000/- which is much more than the amount of ₹7,00,000/- outstanding claimed by the Bank. It is the petitioners' case that the Bank has not properly maintained the accounts and in fact it is the Bank which has misappropriated the monies of the petitioners.

(D) Upon transfer of Bank's suit to the DRT, rival claims of the parties came to be considered by the Tribunal. The DRT allowed the Original Application (hereafter 'OA' for short) filed by the Bank for recovery. DRT granted contractual rate of interest from the date of OA and thereafter at 12% p.a. with quarterly rests till realization. The petitioners filed an appeal before the DRAT under the provisions of the RDDB Act. The

DRAT by its order dated 26/12/2019, which is impugned in this petition, dismissed the appeal with costs.

3] **Submissions of the learned Counsel for the petitioners :**

(A) Learned Counsel for the petitioners submitted that the bank guarantee for ₹27,00,000/- was issued on 21/04/1989 against the FDR of (a) ₹20,00,000; (b) ₹20,000/- and (c) ₹70,000/- aggregating to ₹20,90,000/- in the name of Mr. Manohar B. Kowli. Every year the bank guarantee was renewed. The last renewal of the bank guarantee was on 20/04/1994. The FDR of ₹20,00,000/- was lying with the Bank since 21/04/1989 with agreed rate of 9% cumulative interest. No statement of account of interest was given by the Bank despite repeated requests. As per the Chartered Accountant's Certificate, accrued interest on the FDR of ₹20,00,000/- for the period 21/04/1989 to 20/07/1994 at 9% cumulative rate of interest works out to ₹14,11,533.15. As on

20/07/1994 when the bank guarantee was paid by the Bank to the beneficiary, the Bank was holding FDR of ₹20,90,000/- plus accrued interest of ₹14,11,533.15 aggregating to more than ₹35,00,000/-. According to the Petitioners, there was surplus of ₹7,00,000/- lying with the Bank after paying bank guarantee of ₹27,00,000/-. The Bank has fraudulently debited commission on the bank guarantee at the rate of 1% and 2%. Instead of giving the statement of account of interest on FDR, the suit is filed for recovery. The petitioners realized that they were cheated when the letter dated 30/03/1993 informing them of the commission recovered on bank guarantee was given to them. The petitioners repeatedly asked the bank to give statement of accounts of the interest on FDRs and also commission deducted, which the bank avoided. The Bank has cheated the petitioners and obtained signatures of the petitioners on blank papers. No documents were renewed during the period 1989 to 1994. The petitioners have not signed any document after the payment of the bank guarantee in the year 1994.

(B) It is further submitted that when the United Western Bank had already issued bank guarantee of ₹27,00,000/- charging commission at the rate 0.5% p.a. against the FDR of ₹20,00,000/-, there was no occasion for the petitioners to obtain the bank guarantee from the Bank by agreeing to pay higher commission charges. It does not appeal to logic that the Petitioners would agree to pay commission of 1% and 2% to the Bank when the commission that was being paid by the petitioners to the United Western Bank was 0.5%. It is obvious that the petitioners are cheated and necessary inference must be drawn that though the Bank agreed to charge commission less than 0.5 %, the signatures of the Petitioners were obtained by the Bank on blank papers with a view to cheat them.

(C) The learned Counsel reiterated that the Bank has not taken into consideration the interest accrued on FDR of ₹20,90,000/- from 1989 to 1994, which amounts to ₹15,65,052/-. It is, therefore, submitted that the petitioners did not owe any money to the Bank after taking into consideration the interest accrued on FDR. The learned Counsel strenuously urged that it is the Bank which owes to the petitioners surplus amount of ₹9,55,052/- lying with it since 1994 along with interest at the rate of 21% p.a. till realization of the said amount.

4] **Submissions of the learned Counsel for the respondent :**

Learned Counsel for the Bank on the other hand submitted that the petitioners are assailing findings of fact rendered by the Tribunals. Our attention is invited to the findings recorded by the DRT and DRAT. It is submitted that the findings are based on the appreciation of the evidence on record. Arguing in support of the findings, learned Counsel submitted that the findings cannot be said to be perverse. He prayed for dismissal of the petition.

5] After conclusion of the hearing, the petitioners also filed additional documents on 17/12/2021. In the interest of justice, we have taken the same on record. We have taken into consideration the additional documents, which are in the form of affidavit-in-reply dated 07/01/2005 filed before the DRT in response to the affidavit of Ms.Smita Sabnis. Reliance is also placed on the affidavit dated 03/03/2008 filed by petitioner No.1 before the DRAT.

6] We have gone through the memo of the petition. We have perused the copy of the petition and exhibits, the pleadings filed by the parties. With the able assistance of the learned Counsel for the parties, we have gone through the findings of the DRT and DRAT. The petitioners want us to draw certain inferences from the pleaded facts and the documents on record. The petitioners also want us to draw an inference by contending that when the bank guarantee was originally given by the United Western Bank on a commission at 0.5% on the guarantee amount, there was no reason for the petitioners to have accepted the proposal of the Bank at a higher rate of commission. The petitioners also want us to infer that it is obvious that it is the

Bank which had approached the petitioners with a proposal to charge less than 0.5% commission on the guarantee amount. The Petitioners are persuading us to hold that it is for this reason that the FDR and deposits which were lying with the United Western Bank came to be shifted to the Bank.

7] We have gone through the records. To support the contention of the petitioners that the bank agreed to charge a commission of less than 0.5% on the guarantee amount while obtaining the Bank guarantee, there is absolutely no material on record. Though there are letters written by deceased Manohar Kowli to the Bank placed on record, but these letters are much later in point of time from the date of obtaining the bank guarantee. These letters placed on record by way of additional compilation are from the year 1996 onwards. The bank guarantee was obtained prior to 20/04/1989. The bank guarantee was renewed from time to time and the last renewal was on 20/04/1994. At the request of the petitioners, the Bank on 21/04/1989 had given bank guarantee of ₹27,00,000/- favouring M/s. Markand Gandhi & Company, Advocates & Solicitors, for a sum of ₹27,00,000/- and in consideration thereof, deceased Manohar Kowli (predecessor of defendant No.2) executed a letter of counter guarantee and indemnity dated 20/04/1989. The bank guarantee was renewed from time to time and the last of renewal was made on 20/04/1994. The petitioners had three FDR amounting to ₹20,90,000/- with the Bank bearing FDR Nos.28/2, 29/334 and 28/920 at the time of giving of the bank guarantee. It is not denied that the petitioners had given letter dated 21/04/1989 addressed to the Sub-Registrar of Assurance, Mumbai requesting him to directly deliver the title documents to the Bank. The case of the petitioners is that deceased Manohar Kowli signed the documents on blank papers. It is pertinent to note that though the bank guarantee is dated 21/04/1989, there was no grievance made as to obtaining of the signatures by the Bank of the petitioners on blank papers. On the contrary, the commission was being paid on the guarantee. When the Bank paid the amount to the beneficiary on 19/07/1994, the documents like Demand Promissory Note, Letter of Lien and Set Off, Letter of Continuity of Security were obtained from the Petitioners for the balance amount after adjusting the money belonging to the petitioners that was lying with the Bank.

8] The letter dated 12/07/1994 addressed by the petitioners to the Bank clearly reveals that the petitioners had called upon the Bank to make a payment of sum of ₹27,00,000/- to the beneficiary. The Bank had thereafter made payment of sum of ₹27,00,000/- to the beneficiary by letter dated 19/07/1994. After making the payment of ₹27,00,000/-, the Bank adjusted the margin money aggregating to ₹20,00,000/- lying with the Bank in the name of the petitioners by way of FDR. A sum of ₹7,00,000/- was found due and payable by the petitioners to the Bank.

9] In consideration of the Bank granting/continuing to grant to the petitioners a sum of ₹7,00,000/-, deceased Manohar Kowli on 19/07/1994 executed the Demand Promissory Note for ₹7,00,000/- payable with interest thereon at 18.28% p.a. with quarterly rests.

10] Though the petitioners contended that the Bank allegedly charged excess commission charges, the said objection is raised at a very belated stage, almost 10 years after the Bank started recovering the commission charges. From 1989 onwards, the commission charges as demanded by the Bank were in fact paid by the petitioners for sometime. It is only when the outstanding amount increased and the question of recovery arose, that a claim is made about the excess commission charges. In fact it is the case of the petitioners themselves that the outstanding which the petitioners owe to the Bank be adjusted from the interest accrued on the FDR lying with the Bank. The case of the petitioners therefore is mainly that the Bank has not maintained proper accounts and failed to calculate the proper interest on the FDRs.

11] Thus, the conduct of the petitioners after the Bank paid a sum of ₹27,00,000/- to the beneficiary of the bank guarantee by letter dated 12/07/1994 assumes importance. Pursuant to this payment by the Bank, several documents were executed by the petitioners on 19/07/1994 securing the amount of ₹7,00,000/- found due and payable by them. The case of the petitioners that the signatures were obtained on blank papers can only be stated to be rejected. At the cost of repetition, the petitioners contended that there were number of fixed deposits lying with the Bank and as the accrued interest thereon would be ₹10,00,000/-, the amount of ₹7,00,000/- claimed as due and payable ought to have been adjusted. We do not find any merit in the contention of the petitioners as regards charging excessive commission and obtaining signatures on blank papers.

12] It is then vehemently contended that the Bank avoided reconciling the accounts. The petitioners submitted that the Bank has not properly maintained their accounts and misappropriated the money of the petitioners. According to the petitioners, after adjusting the amount of ₹7,00,000/- due and payable to the Bank, it is the Bank which has to pay the balance amount to the petitioners. In the affidavit filed on behalf of the Bank by Mrs. Smita Sabnis before the DRT, details regarding the adjustment of the FDR and the interest accrued thereon and paid over to the petitioners are stated.

13] We have gone through the findings recorded by the DRAT and DRT. So far as the present petition is concerned, having gone through the concurrent findings of the Tribunal, we do not find any reason to interfere with the findings recorded by the Tribunals as the orders are passed on the basis of appreciation of the materials on record. We do not find any perversity in the findings so recorded.

14] The writ petition is devoid of any merits and is, therefore, dismissed with no order as to costs.

(M.S. KARNIK, J.) **(CHIEF JUSTICE)**

**sandesh*