



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6831 OF 2023

Vijay Narayandas Rizwani .. Petitioner
Versus
Bank of India through the
Branch Manager .. Respondent

**WITH
WRIT PETITION NO. 11556 OF 2023**

Mayadevi Narayandas Rizwani
Since deceased through her L.Rs.
Vijay Narayandas Rizwani and another .. Petitioners
Versus
Bank of India through the
Branch Manager .. Respondent

**WITH
WRIT PETITION NO. 11578 OF 2023**

Prakash Narayandas Rizwani .. Petitioner
Versus
Bank of India through the
Branch Manager .. Respondent

Shri Satyajit S. Bora, Advocate for the Petitioner in all matters.
Shri S. S. Gangakhedkar, Advocate a/w Shri D. S. Patil,
Advocate for the Respondent in all matters.

CORAM : SHAILESH P. BRAHME, J.

CLOSED FOR ORDER ON : 28.11.2023
ORDER PRONOUNCED ON : 05.12.2023

FINAL ORDER :

. Heard the learned counsels for both the sides for final disposal at the admission stage with their consent.

2. The facts and the submissions of litigating sides are common, hence these petitions are decided by this common order. For the sake of convenience the papers of Writ Petition No. 6831 of 2023 are referred to as leading petition.

3. Following are the marginal variations in the facts of these petitions.

Sr. No.	Petition No.	Suit No.	R.C.A.	Appln. U/ Sec. 160	Amount of Recovery
1	W. P. No. 6831 of 2023	Spl. C. S. No. 90 of 1999	166/2019	Exh. No. 13	Rs. 3,00,950/-
2.	W. P. No. 11556 of 2023	Spl. C. S. No. 97 of 1999	176/2019	Exh. No. 16	Rs. 3,85,462/-
3.	W. P. No. 11578 of 2023	Spl. C. S. No. 95 of 1999	169/2019	Exh. No. 13	Rs. 4,06,864/-

4. The petitioners are challenging the rejection of their applications filed U/Sec. 160, 161 and 163 of the Indian Contract Act, 1872 (for the sake of brevity and convenience hereinafter referred as to the 'Act') by distinct orders. The respondent/bank had filed above referred distinct suits for recovery of amount from the petitioners which was extended towards overdraft

facility. The suits were contested by the petitioners. There were counter claims filed by the petitioners praying for damages with interest at the rate of 18% per annum. It is a matter of record that the petitioners pledged the shares towards the security with the respondent/bank.

5. On or about 06.02.2001, the respondent-bank liquidated few shares pledged by the petitioners and secured the amounts to the satisfaction of their outstandings. Being satisfied, the respondent-bank withdrew the suits by filing pursis on 07.04.2001. However, the counter claims of the petitioners remained on file to be adjudicated on merits.

6. By judgment and decree dated 22.10.2019, the counter claims of the petitioners in suits were dismissed. Being aggrieved, the petitioners preferred three distinct regular civil appeals, which are shown in the table in paragraph No. 3 above.

7. Pending appeals, the petitioners preferred distinct applications U/Sec. 160, 161 and 163 of the Act seeking directions to the respondent-bank to produce on record the shares which are for surplus amount being unlawfully detained by the bank after getting satisfied. Those applications are rejected by distinct orders passed on 01.04.2023. Hence these petitions are filed.

8. The learned counsel for the petitioners submits that the respondent-bank without the petitioners' permission sold out the

shares to satisfy the debts. Being satisfied with the claims raised by the respondent-bank, suits were also withdrawn. Hence, bank is bound to return the shares pledged with it for surplus amount. The learned counsel points out paragraph Nos. 4, 5 and prayers of the counter claims. He would submit that there was a foundation in the pleading before the Trial Court itself though separate application or prayer is not made for returning the shares of surplus amount.

9. He would submit that to him the lower Appellate Court committed perversity in holding that the petitioners did not file any application for the relief U/Sec. 160, 161 and 163 of the Act before the Trial Court. He would submit that the Appellate Court committed error of jurisdiction in holding that the petitioners' failed to show that the bank was liable to pay, when there is statement produced on record which is at Exhibit – E disclosing the break up of shares pledged with the bank.

10. The learned counsel submits that Section 160 of the Act contemplates that bailee is under obligation to return the goods without any demand when the purpose for which they are bailed has been accomplished. It is not necessary for the petitioners to file any application for return of the shares. He would submit that appeal is continuation of suit and it is permissible to maintain the application for return of the shares. He would point out paragraph No. 4 of the counter claim to show that the shares amounting over and above the outstanding are with the bank. Therefore, the bank is bound to return the shares for surplus

amount. He relies upon the judgments of the Supreme Court in the matter of **Standard Chartered Bank and others Vs. The Custodian and others** reported in ***(2000) 6 SCC 437*** and ***PTC India Financial Services Limited Vs. Venkateshwarlu Kari and others*** reported in ***(2002) 9 SCC 704***.

11. Per contra, the learned counsel for the respondent-bank supports the impugned orders. He would submit that there was no prayer in the counter claim, which is sought to be agitated U/ Sec. 160 of the Act. When the pleadings were there, nothing prevented the petitioners from praying the relief for return of the shares of surplus amount. There is impediment of Order II Rule 2 of the Code of Civil Procedure for claiming the relief which is by the petitioners. He would submit that the relief which is prayed by the petitioners first time in the Appellate Court is barred by limitation.

12. He would submit that the grievance of the petitioners can be considered during the final hearing of the appeals and not at the interlocutory stage. According to him when the petitioners filed counter claims with necessary pleadings, which were adjudicated on merits and they failed to pray the relief of return of the shares, the provisions of Section 160 of the Act may not enure to the benefit of the petitioners.

13. The learned counsel for the respondent would point out the issue Nos. 2 and 3 and the findings thereon from the judgment and decree passed by the Trial Court to submit that the claim of

the petitioners is not maintainable. It is reiterated that to circumvent the plea of limitation the applications are filed. He would pray to dismiss the petitions. He would rely upon the judgment of the Supreme Court in the matter of **Bachhaj Nahar Vs. Nilima Mandal and another** reported in **(2008) 17 SCC 491**.

14. I have considered the rival submissions of the parties. On factual and material points the parties are at *ad-idem*. The counter claims filed by the petitioners disclose the pleadings in para Nos. 4 and 5 that the shares of surplus amount are detained by the respondent-bank after satisfying its claims. However, there is no prayer to return the shares of the surplus amount. In appeals for the first time the applications U/Sec. 160, 161 and 163 of the Act are made.

15. During the course of the trial the petitioners could have filed applications U/Sec. 160 of the Act. However, no such steps were taken. Though the respondent-bank has filed on record statements which are at Exhibit – E disclosing the break up of shares sold and unsold, it needs to be established and adjudicated that the bank holds shares of the surplus amount. The bank is disputing the entitlement of the petitioners in that regard. There is no objective satisfaction for the entitlement of the petitioners and the liability of the respondent.

16. The appeals are filed in the year 2019 and are awaiting final adjudication. The claims of the litigating sides for return of the shares of surplus amount can be adjudicated at the time of

final hearing of the appeals. There is no urgency or propriety in piecemeal adjudication of the claims of the parties prior to final hearing. In that view of the matter, I do not find any illegality or perversity in the impugned orders.

17. The learned counsel for the petitioners has relied upon the judgment of the Supreme Court in the case of **Standard Chartered Bank and others Vs. The Custodian and others** (supra) and more specifically on paragraph No. 51. It is held that bailer is entitled to all the accretions and the bailee is bound to return the pledged property. The ratio laid down by the Supreme Court may not enure to the benefit of the petitioners because facts of the present case are totally different. The entitlement of the petitioners in the matter in hand is not adjudicated by the Trial Court, but is subjudice in the lower Appellate Court. This ratio can be considered at this stage.

18. The next judgment cited by the petitioners is the matter of ***PTC India Financial Services Limited Vs. Venkateshwarlu Kari and others*** (supra). Paragraph No. 3.2 and 5.2 are referred to buttress that once the purpose is accomplished, the bailer is bound to return the property with all increase or profits or accretions to the bailee and no demand is required from the bailee. Pawnee is held to be not entitled to the benefit from the repayment of the debt if he fails to redeliver the goods. I am of the considered view that the facts of the matter in hand are different and the ratio cannot be made applicable. In the present matter, there is no material on record that the respondent-bank

holds shares of surplus amount.

19. The learned counsel for the respondent has raised plea of limitation for the relief of return of shares of surplus amount. The plea can be taken into account while considering the entitlement to the petitioners. The Trial Court had no occasion to consider this type of relief. When in the Appellate Court for the first time the applications U/Sec. 160, 161 and 163 of the Act are pressed into service, the Appellate Court has to embark an enquiry. The claim of the petitioners cannot be accepted as a gospel truth, at this stage.

20. The learned counsel for the respondent-bank has relied upon the judgment of the Supreme Court in the matter of **Bachhaj Nahar Vs. Nilima Mandal and another** (supra). He refers to paragraph No. 23 of the judgment. The relief claimed by the party is said to be circumscribed by various factors like court fees, limitation, *res-judicata*, estoppel, etc. The jurisdiction to grant relief depends upon various factors. There is merit in the submissions of the learned counsel for the respondent. I prefer to follow the law laid down by the Supreme Court in the above referred matter. The Appellate Court has to take into account all the factors which may involve an enquiry in to the facts. Therefore, it is not possible to allow the applications of the petitioners.

21. I do not find that the lower Appellate Court has committed any error of jurisdiction or perversity in rejecting the

applications. I do not find any substance in the writ petitions. The writ petitions are dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

bsb/Dec. 23